



SPECIFICITY OF THE PLASTIC SURGEON'S COMMITMENT

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Abstract

Medical interventions are restrained at base for the purpose of disease treatment and pain relief. However, plastic surgery is distinguished from other surgeries because of its accessory nature. This particularity raises a dispute about determining the nature of the plastic surgeon's obligation, as some scholars have argued that the surgeon's liability is an obligation of result, and consequently the surgeon's responsibility is engaged when the manoeuvre fails. Contrarily, other researchers argue for maintaining the surgeon's liability within the general framework of legal liability, that is, to due diligence obligation. Others researchers have argued that the surgeon's liability is mixed, is an obligation of result and to due diligence obligation.

Keywords: Plastic Surgeon; Civil Liability; Cosmetic Surgery; Risks; Medical Intervention.

1. INTRODUCTION

With the increasing and growing demand for cosmetic surgeries, cosmetic surgery has become one of the most modern forms of medical procedures. It was therefore natural to establish a legal framework that defines its regulations due to the rising risks associated with it, on the one hand, and on the other hand, to provide legal protection in the case of medical errors.

Cosmetic surgery, as defined by cosmetic surgeons, is a procedure in which a person aims to improve the appearance of one of their body parts, either for aesthetic purposes or to correct damage or deformity they have sustained. Cosmetic surgery can thus be divided into two categories: reconstructive or corrective surgery, which is typically performed to repair damage resulting from accidents, burns, or congenital deformities, and enhancement surgery, which is done for non-therapeutic purposes, aiming to alter the appearance of a body part to make the individual feel more satisfied with it.

According to the previous definition, cosmetic surgery is unlike other surgeries intended to achieve a curative purpose; rather, its goal is to correct a deformity or improve appearance.

The unique nature of cosmetic surgery stems from the risks it usually entails and the absence of a therapeutic justification for the surgical intervention. Consequently, the work of a cosmetic surgeon has a particular nature compared to other physicians. The cosmetic surgeon deals with the human body not for the sake of treatment and healing but for beautification and adornment, which imparts a distinctive nature to their obligations.

1.1 Study problem

The problem of this study can be formulated in the following questions:

- what is the nature of a cosmetic surgeon's specialty?
- where does the uniqueness of their obligations lie?

To answer this issue, we will address the following points: the nature of the cosmetic surgeon's obligations (section two), and the nature of the cosmetic surgeon's commitment (section three).

2. THE NATURE OF A COSMETIC SURGEON'S OBLIGATIONS

The Algerian legislator has not taken a clear stance on cosmetic surgery, despite the issuance of the new Health Law (Law No. 18-11, 2018). Therefore, cosmetic surgery in Algeria raises both doctrinal and legal debates in terms of its regulations and the quest for legal protection for those undergoing it, given that the general rules of medical liability do not apply to it. Additionally, some

practices, claimed to be cosmetic surgeries, are currently operating under the guise of other specialties, including dermatology, and even women's hair salons.

Like other doctors, the cosmetic surgeon bears responsibility, due to the legal obligations imposed on them, for performing actions contrary to medical rules and laws. Given the special nature of the surgical intervention they perform, cosmetic surgeons face obligations distinct from those found in general rules, which the courts scrutinize rigorously when holding them accountable. These obligations include: informing the patient seeking cosmetic surgery ¹, obtaining the patient's consent, maintaining the confidentiality of the patient, and ensuring the surgeon's specialization.

2.1 The Obligation of the Cosmetic Surgeon to Inform the Patient Seeking Surgery

Article 43 of the Algerian Medical Code of Ethics ([Executive Decree No. 92-276, 1992](#)) obligates physicians and cosmetic surgeons to provide clear and truthful information to the patient regarding the nature of the procedure they will undergo.

Article 23/1 of the Algerian Health Law imposes an obligation on physicians to inform and notify the patient about their health condition, the type of intervention they will undergo, and the potential consequences of that intervention.

The French legislator, ([Article 6322-2 of Law No. 2002-303, 2002](#)) concerning patients' rights and the quality of the healthcare system, stipulates that a cosmetic surgeon must inform the patient or their legal representative of the circumstances of the operation, all expected risks, complications, and even the outcomes of the surgery.

The legal emphasis on the cosmetic surgeon's duty to inform the patient is due to the particularity of cosmetic surgeries and the risks they carry in most cases.

Doctrine and jurisprudence stress the necessity for the cosmetic surgeon to inform the patient of both expected and unexpected risks, side effects, and even exceptional risks ([Al-Jumaili, 2009, p. 322](#)).

The information provided by the cosmetic surgeon prior to the surgical intervention must be clear. In this regard, the French Court of Cassation has ruled that a cosmetic surgeon is liable if they fail to provide a clear and truthful picture to the patient about the nature of the surgery and its side effects ([Jameel, 1987, p. 11](#)).

Comparative legislation requires that the patient be informed in a language they understand, so they can fully comprehend the information. The use of medical terms, understood only by specialists, should be avoided. The information must be comprehensive and complete regarding all aspects of the procedure, from its cost to the expected and unexpected risks, as well as the side effects and recovery period, and all of this must be communicated with precision, honesty, and integrity ([Mamoun, 2006, pp. 93-94](#)).

A recent ruling, issued by the ([Court of Ain M'lila, Algeria, 2018](#)) in a case between the National Insurance Company of Ain M'lila against (N.Q.) and the Eye Clinic of Dr. (D.S.), stated: "(The doctor is obligated to inform the patient of the results of the surgery, the side effects of the treatment, and the potential risks. In the event of failure to fulfill this obligation, the doctor bears the burden of paying appropriate compensation to the patient)."

It is understood from this ruling that the Algerian judiciary has taken a strict stance regarding informing patients, even in regular (non-cosmetic) surgeries. In this case, the ophthalmic surgeon was required to inform the patient about the results of the surgery, the side effects, and even the potential risks. A guideline was established for the benefit of doctors, indicating that the physician fulfills their obligation, while the other party must prove their claims.

The Nîmes Court in France ruled on 19/10/1994 that a doctor who fails to inform the patient or the individual seeking cosmetic surgery about the risk of facial nerve paralysis resulting from the operation—and when this risk actually materializes—has, through this omission, deprived the patient of any possibility of making an informed choice. The patient was thus unable to make an

¹ I prefer using the term 'cosmetic seeker' instead of 'patient,' as most cases that approach a cosmetic surgeon do not suffer from any organic disease that requires relieving pain or attempting to cure it, but rather for the purpose of enhancing or correcting appearance

informed decision and give their consent with full knowledge of the risks. Therefore, the doctor's failure was deemed the sole cause of the harm for which compensation was sought (Nagida, 1992, pp. 24-25).

A cosmetic surgeon is responsible for the harmful outcomes that affect the individual seeking cosmetic surgery as a result of treatment, even if no error was committed in the course of their work, as long as the surgeon did not inform the patient about the nature of the condition, the treatment, and the risks of the surgical procedures (Mansour, 2006, pp. 36-37).

Civil liability is established for the cosmetic surgeon as soon as there is a failure to fulfill one of the aforementioned conditions for providing information. This is what the French judiciary adopted, recognizing the liability of a cosmetic surgeon for failing to inform a patient of unforeseen risks, even if those risks are rare. This was the case for a 66-year-old woman who underwent surgery to remove a tumor and wrinkles from the lower eyelid, resulting in blindness. Despite the surgeon following all proper medical protocols, the court held the doctor responsible for failing to warn the patient of the severe risks of the surgery, even though such risks (like blindness) are rare (Qazzmar, 2010).

The judiciary operates on a presumption in favor of physicians, assuming they have fulfilled their obligation to the best of their ability, and it is the patient's responsibility to prove that they were not informed of the effects and risks of the medical intervention. While this presumption applies to all types of medical interventions, it carries more weight in cosmetic surgeries, where the courts tend to hold the doctor accountable and assume that they promised the patient successful surgical results to justify the intervention. Therefore, it is advisable for the physician to protect themselves in such matters by obtaining written evidence from the patient, acknowledging that they are fully aware of all the details of the surgical procedure and its expected risks (Mansour, 2006, p. 118).

Failure to fulfill the obligation to inform results in civil liability, which is generally contractual between the surgeon and the patient seeking cosmetic surgery. This liability requires the elements of fault, damage, and causality. When these elements are present, the surgeon is obligated to provide direct compensation to the injured party, or the latter may seek compensation from the insurance company in exchange for the insurance premiums paid by the insured to cover civil liability (Kedjar, p. 340).

From the above, it becomes clear that the cosmetic surgeon has the obligation to fully inform the patient about all the risks, even if they are exceptional or rare, to allow the patient to weigh the benefits and risks of cosmetic surgery and make an informed decision to undergo or reject the procedure.

2.2 The Obligation of the Cosmetic Surgeon to Obtain the Patient's Consent

Based on Articles 43 and 44 of the Algerian Medical Code of Ethics, the patient's consent must be free and informed whenever a medical intervention poses a risk to the patient's health.

This consent is considered the essential element in allowing a physician to touch the human body (Qazzmar, 2010, pp. 98-99). It is a necessary condition for permitting surgical intervention, which is an exception to the general prohibition on violating the sanctity of the human body. Comparative legislations have allowed surgeons to perform medical interventions only after obtaining the patient's consent.

Cosmetic surgery requires obtaining the patient's consent before any medical intervention, unlike general surgery, where a doctor is not required to obtain the patient's consent if the surgery is urgent and necessary for the patient's well-being.

In cosmetic surgery, the patient's consent is a fundamental condition that cannot be overlooked. These procedures are typically performed in calm circumstances, allowing the patient ample time to think, reflect, and make a decision about whether to proceed. This underscores the need to secure the patient's consent.

The Algerian legislator has subjected consent in cases of human tissue extraction and transplantation, as well as autopsies, to specific formalities due to their severity. However, there is no legal provision regarding how consent should be expressed in cosmetic surgery. In practice, based on what is customary in national private clinics, acceptance is usually expressed verbally. In

comparison, in European countries such as France, the situation is different. Consent is given in writing, with the patient signing a document that provides clear explanations about the type of cosmetic surgery, all the expected and exceptional risks, and the outcomes (Daoudi, 2015, p. 50).

From the above, we conclude that one of the conditions for the legitimacy of cosmetic surgery is obtaining the patient's consent. If this condition is absent, the medical intervention loses its legitimacy, and the surgeon bears full responsibility, even if no error was made on their part.

2.3 The Obligation of the Cosmetic Surgeon to Maintain Medical Professional Confidentiality

Article 24 of the aforementioned Health Law guarantees the patient's right to privacy and the confidentiality of all medical transactions. Article 196 also obligates healthcare professionals to maintain medical confidentiality.

Articles 37, 39, and 40 of the Medical Code of Ethics specify what the doctor must keep confidential. Article 37 outlines everything related to professional and/or medical secrecy, while Articles 39 and 40 emphasize the need to keep patient records and clinical documents confidential and not disclose the identity of patients.

According to these legal provisions, the physician is under a negative obligation to achieve a specific result, which is maintaining professional confidentiality and not disclosing it. This serves the patient's interest in having their physical and moral secrets protected to preserve their reputation. Patients seek medical help to alleviate their suffering; it is not logical for their suffering to be exacerbated by the disclosure of these secrets (Ako, 2016, pp. 112-115).

The French judiciary, in a ruling by the Bordeaux Court on 05/07/1893, convicted a doctor for publishing a photograph of a patient without placing a black bar over their eyes to conceal their identity. The court did not accept the doctor's argument that the scientific value of his medical discovery was limited to the patient's face (Al-Abrashi, 1951, p. 424).

2.4 The Necessity of Obtaining a Specialization Certificate

Cosmetic surgery requires precise medical specialization due to the risks associated with these procedures and their high costs. A cosmetic surgeon must be fully qualified for the medical intervention they are about to perform, along with the accompanying medical team.

Article 174 of the Health Law requires healthcare professionals and medical practitioners to obtain a specialization certificate in order to practice their profession. Through this article, the Algerian legislator emphasized the requirement of specialization for performing such types of surgeries.

According to this article, performing cosmetic surgery without the required specialization holds the doctor responsible. However, since the Algerian Health Law does not formally recognize this specialization, any doctor may perform such surgeries, which raises a significant issue.

In this context, the French judiciary, on April 03, 1968, held a doctor legally liable for not having the specific specialization required in cosmetic surgery when he performed the operation. The case involved a woman who read an article in a weekly magazine about a cosmetic surgeon praised by the writer for his innovative technique for removing wrinkles from the forehead. The woman visited his clinic and agreed to undergo the procedure. A few weeks after the surgery, she noticed that her hair began to fall out to the extent that one side of her head was bald, and her skin looked unpleasant. She filed a complaint with the court of urgent matters.

The court ruled that the doctor was responsible because he was not adequately specialized and qualified to perform such surgeries (Al-Fadhel, 2000, pp. 84-85).

In another example, the French Court of First Instance in Seine ruled against a surgeon for committing gross negligence that resulted in severe harm to the patient. The court found that the surgeon did not have a clear understanding of cosmetic surgery and recklessly engaged in a procedure that only specialists fully understand the risks of (Qazzmar, 2010, p. 113).

A cosmetic surgeon's liability arises if they perform a surgery without the required specialization, as their performance is measured by their level of specialization and is determined by the qualifications and extensive experience they possess.

From the above, the obligations of a cosmetic surgeon can be considered obligations to achieve a specific result. Therefore, the burden of proof lies with the surgeon, and their responsibility is waived if they can prove the existence of an external factor beyond their control.



3. THE NATURE OF THE COSMETIC SURGEON'S COMMITMENT

The determination of the nature of a cosmetic surgeon's commitment has sparked significant debate among legal scholars and the judiciary. Some believe that the cosmetic surgeon's obligation is one of providing due care, while others argue that it is an obligation to achieve a specific result. Another perspective considers it a mixed obligation, involving both achieving a result and providing due care.

3.1 The Obligation of the Cosmetic Surgeon to Exercise Due Care

The judges of the French Court of Cassation have established since the famous ruling on May 20, 1936, that the relationship between a doctor and a patient is contractual. The doctor is obligated to follow medical principles and standards to treat the patient, while the patient must adhere to the medical advice and guidelines. This relationship gives rise to the doctor's contractual liability (Lauren, 2007, pp. 67-68).

The majority of French and Egyptian legal scholars believe that the obligation of a cosmetic surgeon is one of due care. The surgeon is required to observe the rules and standards of their profession and make the necessary effort solely for the patient's recovery (Jameel, 1987, pp. 67-68).

The nature of a cosmetic surgeon's commitment is to exercise due care, as cosmetic surgery is no different from ordinary surgical procedures. Therefore, it should not be excluded from the general rules. The position held by some scholars that it should be is seen as extreme and aimed at undermining the field of cosmetic surgery (Al-Jumaili, 2009, p. 346).

On the judicial front, despite the stricter stance observed toward cosmetic surgery, the judiciary continues to affirm that the cosmetic surgeon's obligation is one of due care, not to achieve a specific result, in all types of cosmetic surgeries (Al-Husseini, 1978, p. 95).

The judiciary demands and emphasizes a high standard of care from cosmetic surgeons, requiring them to exercise great caution, vigilance, and diligence in accordance with scientific standards. This has led to the adoption of the term "heightened care," since the intervention of a cosmetic surgeon is rarely urgent and typically involves correcting a defect or deformity. Moreover, such procedures are often performed on a healthy body part to enhance its appearance, as affirmed by the Court of Appeals in Lyon in a ruling on January 08, 1981. The Court of Appeals in Nancy also upheld this view in a ruling issued on March 18, 1991, stressing that a cosmetic surgeon's obligation is one of due care and that cosmetic surgery requires more skill and precision than classical surgery, as its goal is to improve external appearance (Khairallah, 2000, pp. 498-502).

Arab jurisprudence has followed its French counterpart in addressing the liability of cosmetic surgeons in surgical interventions. In Egypt, the judiciary has not distinguished between cosmetic surgery and ordinary surgery in terms of applying general rules, except for imposing stricter standards of care on cosmetic surgeons performing cosmetic surgeries. In one ruling from the Egyptian Court of Cassation, it was stated verbatim: "The cosmetic surgeon, like any other doctor, does not guarantee the success of the surgery he performs, but the degree of care required from him is higher than that in other surgeries, considering that cosmetic surgery is not intended to cure the patient of a physical ailment but to correct a deformity that does not endanger the patient's life (Mansour, 2006, p. 77)."

Thus, Egyptian courts have not found a reason to differentiate between cosmetic surgery and ordinary surgery, subjecting both to the same rules (Al-Abrashi, 1951, pp. 303-304).

The Jordanian Court of Cassation, in ruling No. 2119/2008 issued on 14/05/2009, held that a cosmetic surgeon's obligation is to exercise a special type of care in cosmetic surgery, more than in other types of surgeries, because the purpose of cosmetic surgery is not to cure the patient but to correct a deformity and improve appearance without exposing the patient's life to danger (Al-Budairat, 2021, p. 2346).

The judiciary tends to emphasize that a doctor should refrain from performing cosmetic surgeries if they are not confident that there is a reasonable balance between the risks of the procedure and the patient's desired outcome. Moreover, they must use recognized medical methods and avoid experimental purposes (Hamawi, p. 189).

No Algerian court rulings have been found that specifically address the liability of surgeons in cosmetic surgeries.

Finally, the researcher does not support the view that the obligation of a cosmetic surgeon is limited to exercising heightened care alone, especially when distinguishing between reconstructive surgery and enhancement surgery. In the latter case, the cosmetic surgeon should be obligated to achieve a specific result, as the patient's objective in most of these surgeries is to attain a particular outcome. This is the sole justification for undergoing the procedure, and the contract between the two parties is based on achieving a result, not merely exercising care. Therefore, if the surgeon promises a result, their liability arises immediately if the operation fails.

3.2 The Obligation of the Cosmetic Surgeon to Achieve a Specific Result

Some legal scholars argue that the conditions justifying the violation of the sanctity of the human body, such as the necessity to cure a patient from an ailment or illness, are rarely present in cosmetic surgeries. Furthermore, there is often no proportionality between the risk the patient is exposed to and the expected benefit. Therefore, the surgeon's obligation in such procedures should be considered one of achieving a specific result, unless the causal relationship between the surgeon's actions and the resulting harm can be disproved ([Ajaj, 2004, p. 301](#)).

Some scholars believe that the standard of exercising due care should not apply to cosmetic surgeries, as the surgeon is obligated to achieve a specific result. Failure to achieve this result means the surgeon has subjected the patient to unnecessary pain without any meaningful benefit ([Farajallah & Mohannad, 2011, p. 108](#)).

This was confirmed by the Paris Court of Appeals in its ruling on 23/02/1995, stating that the result alone justifies surgical intervention for cosmetic purposes. Since such surgery is not essential for the patient's health, the surgeon should refrain from performing the procedure if there are significant risks of failure, especially if the patient was not warned of these risks. The surgeon should only proceed if confident of success, as the situation does not involve critical matters related to the patient's life or health. The court held the surgeon responsible in this case because there was no justification provided for the operation's failure ([Khairallah, 2000, p. 498](#)).

In another case, a fashion model suffered from swelling in one of her legs. The surgeon hesitated to perform the surgery but eventually proceeded. Although the surgery was initially successful, the patient later developed a malignant condition, and the leg had to be amputated. When the model filed a lawsuit against the cosmetic surgeon, the court ruled that the severity of the risk she faced was evident and did not require proving any fault.

Based on the foregoing, the judiciary has framed the matter within the context of balancing the benefit of cosmetic surgery with the outcome, a position that reflects a degree of strictness and exaggeration ([Rais, 2007, p. 204](#)).

This approach has faced severe criticism, primarily based on the argument that considering cosmetic surgeries as inherently different from other surgical procedures does not detach them from the general concept of a surgeon's work. Such a distinction is neither legally nor practically acceptable. Not all cosmetic procedures should be classified as requiring the surgeon to achieve a specific result, as this would inevitably hinder the progress of cosmetic surgery ([Farajallah & Mohannad, 2011, p. 109](#)).

The researcher believes that considering a surgeon's obligation as one of achieving a result in all cosmetic surgeries is highly unfair and undermines the surgeon's confidence. Some cosmetic surgeries make it difficult for the surgeon to achieve the desired result, especially in cases of reconstructive surgery—such as when correcting a congenital deformity. In such cases, the surgeon's obligation should be to exercise due care, not to guarantee a result, provided that the patient's condition after the surgery is better than before. Additionally, the surgeon should refrain from performing the procedure if success is not reasonably certain.

3.3 The Mixed Obligation of the Cosmetic Surgeon

Amid the ongoing doctrinal debate over the scope of a cosmetic surgeon's obligations—whether they are to achieve a result or to exercise due care—a third view has emerged. This perspective suggests that a cosmetic surgeon's obligation is mixed; they are required to both achieve a result

and exercise due care. Cosmetic surgery, in general, may involve two types of obligations: in some cases, the surgeon must achieve a specific result, while in others, it is sufficient to exercise due care. Nevertheless, the cosmetic surgeon is responsible for ensuring that the patient's condition after surgery is not worse than it was before the procedure; failing to do so reflects negligence in diagnosis and judgment (Al-Baniyah, 1993, pp. 222-224).

Scholars have presented various interpretations of this mixed obligation, debating when the surgeon is required to achieve a result and when they must exercise due care. According to this view, it is crucial not to equate urgent and non-urgent cases in cosmetic surgery. Necessity is not always medically urgent, requiring immediate therapeutic intervention. It can also be psychological and social, involving a severe deformity that causes distress or resembles a disease that needs to be corrected. However, some individuals may accept a congenital deformity without any desire for cosmetic surgery, even if there are psychological and social reasons for it. On the other hand, emergency cosmetic surgery refers to situations where medical necessity demands urgent intervention, as the patient's life is at risk (Farajallah & Mohannad, 2011, p. 112).

Thus, achieving a specific result is only required in urgent, necessary surgeries, while non-urgent necessary surgeries and purely cosmetic procedures generally do not require immediate action. In these cases, all necessary precautions must be taken, and the risks and benefits thoroughly assessed. The decision to proceed should be made carefully, after informing the patient of all potential risks (Ajaj, 2004, p. 303).

In fact, a cosmetic surgeon is obligated to exercise due care in cases of urgent necessary cosmetic surgery, when the patient's life is at risk. The surgeon is also obligated to exercise due care in reconstructive cosmetic surgeries, such as those addressing injuries from accidents or congenital deformities that do not threaten the patient's life. In such situations, the surgeon often cannot achieve the result the patient desires. Their obligation is to ensure that the patient's life is improved compared to its previous state, rather than to guarantee a specific result.

4. CONCLUSION

Cosmetic surgery differs from traditional surgery in that it has a unique nature. This uniqueness places specific obligations on the cosmetic surgeon, which are emphasized by both legal scholars and the judiciary. These obligations include: informing the patient seeking cosmetic surgery, obtaining the patient's consent, maintaining the confidentiality of the patient, and ensuring the surgeon's specialized expertise.

This study reached several conclusions, including:

- The cosmetic surgeon is subject to all the obligations imposed on any other physician, in addition to refraining from performing the surgery if its success is not certain.
- The cosmetic surgeon must inform the patient seeking cosmetic surgery of the expected, exceptional, and rare risks associated with the procedure.
- The obligation of the cosmetic surgeon has a unique nature; it is an obligation to achieve a specific result in enhancement surgeries, while in reconstructive cosmetic surgeries, it is an obligation to exercise heightened care.

4.1 Study Recommendations

Through this study, several suggestions were made, the most important of which are:

- Urging the Algerian legislator to expedite the issuance of legal provisions that define the regulations for practicing cosmetic surgery.
- Precisely defining the obligations of the cosmetic surgeon, as this is one of the most important legal guarantees for the rights of patients seeking cosmetic surgery.
- Mandating that the medical contract be in written form, clearly outlining the surgeon's obligations, the risks of the procedure, and the patient's consent.
- Imposing strict requirements on cosmetic surgeons to ensure that they only perform surgeries if they have specialized expertise, extensive experience, and a high level of competence.



- Establishing an insurance fund to cover the risks of cosmetic surgery, to provide reassurance to both patients and cosmetic surgeons.
- Including legal courses in medical school curricula to enable future physicians to understand the responsibilities they bear.

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