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**A COMPARATIVE STUDY OF SURGEON'S LIABILITY FOR  
PLASTIC SURGERY ERRORS IN JORDAN**

Nasir Mohammad Al Balawi (PhD)<sup>1</sup>

and

Farouq Ahmad Al Azzam (PhD)<sup>2</sup>

*ABSTRACT*

*This research deals with the Liability of a surgeon for his error in plastic surgery as this topic is closely related to the reality of our contemporary life due to the scientific development we are witnessing currently. Today, plastic surgery has become a requirement of contemporary life, some people turn to plastic surgeons to repair physical flaws, burns and deformities after a serious accident, or simply as a cosmetic enhancement in the luxury societies in search of adornment or for aesthetic aspects. Plastic surgery has taken their place in the medical field and has its system and methods.*

*Keywords:* Plastic Surgery, Cosmetic Surgeon , Legal Responsibility, Medical error, Jordanian Law.

**INTRODUCTION**

The scientific development is the main reason for the development of the concept of medical work which has expanded to include the examination, diagnosis and treatment. Nowadays, doctors are not only asked for treatment of the disease and pain relief, but they are requested to beautification, restoration, reconstruction, or alteration of the human body. Another fact is that, people turn to plastic surgery for two main reasons, the inclination toward beauty and youthfulness as in cosmetic surgery or to treat deformity and burns resulted from accidents or wars as in plastic surgery in general.

In most cases, the surgeon performing the procedures are highly skilled, properly trained and experienced enough to perform the surgery without committing errors. But not all surgeries are successful, and in some cases, surgical errors lead to permanent injury or even death accordingly, medical malpractice lawsuits over cosmetic surgery appeared. Law had a strict attitude toward this kind of treatment, it was not acceptable to get this kind of treatment especially if it was done for just an aesthetic treat and so a surgeon of cosmetic holds all the responsibility of this kind of treatment and it was not important that the treatment was done in

<sup>1</sup> Senior Lecturer, Faculty of Law, Jadara University Jordan

<sup>2</sup> Senior Lecturer, Faculty of Law, Jadara University Jordan

accordance with the correct medical science. As a result of the fuss made around the court decisions on this issue and what people considered as a moral beauty of the requirements of contemporary life and its psychological considerations, judiciary gradually changed its position and considered it as a kind of surgical operations that lied under the same principles of surgery, but they are of a special nature. But this does not mean that a surgeon shall not be asked about the harmful consequences of his work because he is doing his duty ,he is a human beings who is subject to mistakes and forgetfulness, he may cause the loss of the soul or damage whether intentionally or unintentionally, he is liable for his fault regardless to its nature and causes. The problem of this research lies in the surgeon's liability for making a mistake in plastic surgery, and when to prove his liability of the committed error in this surgery. Statement of the nature of the surgeon's commitment toward the patient and Prove the surgeon's liability of the error of the plastic surgery. In addition to Identifying medical errors and their types. The researcher followed the descriptive approach, which is based on analysis of the scientific material, by tracking and describing the liability of the surgeon for medical error in the Jordanian civil code, and the position of the judiciary.<sup>3</sup>

### MEDICAL ERRORS AND LEGISLATIVE REGULATION OF PLASTIC SURGERY

The medical error is defined as a failure that does not occur from an alert doctor found in the same external circumstances surrounding the responsible physician.<sup>4</sup> Medical error is a violation or a lack of duty of care and vigilance that are consistent with the recognized medical scientific assets. We can notice that all these definitions are general. Comprehensively, a medical error is defined as : any negligence of duty, or failure of performance and malpractices occurred by the doctor in his behavior that violate the rules and medical principles followed by the world heroically and practically at the time of implementation of the medical work without having a will to do this error with the possibility of the occurrence of this error.<sup>5</sup>

### LEGISLATIVE REGULATION OF PLASTIC SURGERY

The Jordanian legislation did not explicitly provide plastic surgery, as the Jordanian medical constitution stated the physician's duties in general and the medical responsibility between the physician and the patient that is to make every effort and energy to provide care ,kindness and sincerity to all patients alike and any medical action should be aimed at the absolute interest of the patient and should be justified.<sup>6</sup> Historically, In France, the Act of 4 March 2002 contributed to the addition of Article 6322 to the Public Health Act. The latter law stipulates that certain conditions must be respected to allow the establishment of plastic surgery institutions and the need for prior authorization for institutions under construction. The Law of March 4, 2002 required institutions practicing plastic surgery to obtain prior authorization and

<sup>3</sup> Omar,A,M,2008, Dictionary of Contemporary Arabic Language, World Books for Publishing and Distribution.

<sup>4</sup> Abu Jamil,W,H,1991, Medical Error, Analytical, Juristic and Judicial Study in Egypt and France, Dar al-Nahda al-Arabiya, Cairo, p.38.

<sup>5</sup> Obaid,M.A,1989, Criminal responsibility of doctors for disclosure of professional secret. Dar Al-Thaqafa Publishing House, Amman, Jordan, p. 53, 54.

<sup>6</sup> Jordanian Medical Constitution of 1989: Articles (1-2-12).

impose a strict commitment to information, as well as an obligation to ensure the quality and effectiveness of the care provided.<sup>7</sup> Under the decree of July 11, 2005 (French)<sup>8</sup>, the legal system of this pre-licensing was stipulated, requiring plastic surgeons to perform surgical intervention in licensed institutions. This license is granted and renewed by the competent administrative authority in the presence of institutions that practice plastic surgery. In addition, decisions to grant or refuse to give a license must be justified and remain valid for five years. It is noted that another decree was issued on the same date.<sup>9</sup> To determine the technical conditions for the work of plastic surgery institutions in addition to the imposition of partial penalties when violating these conditions. It is worth mentioning that the person undergoing plastic surgery is not literally sick in most cases and the only goal of this plastic surgery is to get well-being or beauty satisfaction.

Therefore, the French legislation considered the person who is subject to plastic surgery as a consumer and thus benefited from the rules that apply to Consumer<sup>10</sup>. The law requires all institutions that practice plastic surgery to respect several technical standards aimed at obtaining recognition of these bodies by the competent authority. Thus, these institutions must have obtained the required license and be recognized by the competent administrative authorities (the administrative governor of the province). This license is often for a specific term renewable. When the license is granted, these institutions must start their business within a maximum period of 3 years. If you do not do so during the specified period, the license is null and void and shall be nullified if the foundation ceases to perform its activities within a period exceeding six months.

The license may also be cancelled if the institutions advertise their business. The license to practice plastic surgery may be suspended in case of emergency or non-conformity with the technical conditions imposed by the decree<sup>11</sup>, that aims to ensure the quality and safety of care provided in these institutions. March 4, 2002 law provides for a mechanism of work for institutions that have undergone cosmetic surgery interventions that require prior authorization.

The French decree of July 11, 2005 sets forth the legal system for this initial license, whereby plastic surgeons are required to carry out their work within licensed institutions. This license is granted and renewed by the competent authority. In addition, the decision to grant or deny a license must be justified. The license period is five years. Another decree determined the technical conditions for the work of plastic surgery.

Non-therapeutic work involving plastic surgery with its sophistication and accuracy can lead to fundamental changes in the human form to achieve a pure material objective or an illegal purpose (concealing a different appearance to commit a crime of theft) or gender change. If it is considered as a type of cosmetic surgery that aims to change the appearance of the patient to

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<sup>7</sup>Debryne, H, 2003, Application of the law March 4, 2002 on 1 Alea Medical in surgeon's legal responsibility, e-memory of I National Academic of Surgery, p 6.

<sup>8</sup>D. n 2005 - 776, 11 juillet 2005, Jo 12 juillet 2005

<sup>9</sup>D. 11 2005 - 776, 11 juillet 2005.

<sup>10</sup> Monet, J & Maignan, C, 2006, Small legal guide of consumer of aesthetic surgery, available on the site [http / www.droit-medical.net](http://www.droit-medical.net).

<sup>11</sup> Haertig, A. & Hansen, S. & Richard, F, 2005, Surgical Responsibility under the Compensation Act for Victims of Medical Access Act March 4, 2002, e-memoire of the National Academy of Surgery, 4, p 10 - 14.

create confusion in the minds of others to escape from the crime or for not committing it<sup>12</sup>. For this reason, it is a necessity to issue legal text concerned with this issue.

Noticeably, Judicial procedures are few in the field of plastic surgery. Pursuant to Article 2 paragraph 2 of the Jordanian Civil Code, which states: "If the court does not find a provision in this law, the provisions of the Islamic jurisprudence that are most in accordance with the provisions of this law shall be governed by the provisions of Islamic law. The Jordanian legislation was keen to provide protection to the human body and its internal and external functions. It considered that any harm compromised the integrity of the human body and affects its normal functioning and organs, constitutes a crime of injury, whether it leaves a material impact or not, including psychological and a material impact<sup>13</sup>. The Jordanian legislation stated this protection of the integrity of the body in the Act dealing with wound and beating based on the legal provisions of the Jordanian Penal Code<sup>14</sup>. However, the Jordanian Penal Code authorized surgical operations and medical treatments if they were performed with the consent of the patient or the approval of his legal representatives or in cases of extreme necessity<sup>15</sup>.

But we wonder what is meant by this protection and what does it focus on? It focuses on the right to integrity of the body, the interest of the person protected by the law, to keep his body in all functions of life naturally, and not subjected to any physical pain. This right includes three elements: The first is the right to keep the body organs functioning normally, and any violation is considered an infringement of the human right and a penetration to the right of the integrity of the body. The second element is the right to retain the entire body parts intact. Accordingly, amputation, alteration or eradication is detrimental to the integrity of the body, the last element is the right to rid oneself of physical pain, and therefore any act that leads to the increase of this pain is detrimental to the integrity of the body.<sup>16</sup> Thus, the Jordanian legislation considered the basis for permitting surgery and medical treatment to be approved by the law after the required conditions were met.<sup>17</sup>

As mentioned above, judicial procedures are few in terms of dealing with plastic surgery issues. In a case brought before the Jordanian judiciary, the Court of Cassation judged that the doctor was liable for the deformity of the victim's face, and he had to pay the costs of the cosmetic surgery to restore the situation to the extent that it was before. In addition to compensation that the court's award pursuant to articles 266 and 274 of the Jordanian Civil Code<sup>18</sup>

We support the Court of Cassation's decision to establish the liability of the doctor for the wrongful act of deformity caused to the patient, since it constituted an injurious act requiring

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<sup>12</sup> Bdeia, M, S, 1994, Medical Responsibility in accordance with Law No. 22 of 1994, Lebanese Medical Ethics, Conferences, Beirut, 226-267.

<sup>13</sup> Diat, S, 1989, The responsibility of the criminal doctor in the transfer and transplantation of human organs, Master Thesis, Faculty of Law, University of Jordan, Amman, 1989, p. 74.

<sup>14</sup> Articles (333-338) of the Jordanian Penal Code No. 16 of 1960 and its amendments.

<sup>15</sup> Article (62/2 / C) of the Jordanian Penal Code No. (16) for the year 1960 and its amendments.

<sup>16</sup> Jaradat, M, S, 1995, Human body Transference in Jordanian Law and Islamic Law, A Study Presented to the Jordanian Bar Association for the Purpose of Registering in the Registry of Lawyers, p. 14 and Beyond, Quoting Ahmed Shawqi, Criminal Law and Modern Medicine, Comparative Analytical Study on the Legitimacy of Organ Transplantation Humanity, Cairo, 1986, p. 20.

<sup>17</sup> Article (62/2 / C) of the Jordanian Penal Code No. (16) for the year 1960 and its amendments.

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<sup>18</sup> (Jordanian Law No. 424/95, p. 10, 9) Journal of the Jordanian Bar Association, Amman, 1995, p. 2689, Discrimination of Jordanian Rights No. 136/99, Journal, p. 12, 11 of 2002, pp. 2693-2700.

the doctor to compensate for the injury to the patient. The researcher believed that this type of surgery, whether it is purely aesthetic or for the treatment of mental illnesses (depression, introversion, frustration and social isolation) as well as physical diseases (such as deformities and burns), necessary to perform plastic surgery to show the perfection of God creation of the human body and not just to make any change in it. In addition to that cosmetic surgery is of an economic dimension currently, it helps the person to earn a living.

#### THE STANCE OF JURISPRUDENCE ON PLASTIC SURGERY

Medicine Like any other sciences, it develops and has new developments that serve the social need, the physical and psychological health of the individual and society alike. Plastic surgeries - through its long journey - have undergone various stages and developments. Historically, the French jurisprudence<sup>19</sup> first went to the non-permissibility of plastic surgery because they do not fall within the framework of the therapeutic surgeries that doctors are justified to perform directly for the benefit of a patient. The French judiciary expressed its reservation to this type of operation in a judgment issued by the Paris Court in 1913; when a doctor has started a cosmetic work on a girl through radiation, as she went to a doctor to treat her from the hair that grows constantly on her chin and skin of her face, the doctor and according to the rules of science treated the girl by radiation which resulted a skin disease.

The girl filed a complaint against the doctor and the court's decision was that he had initiated a dangerous treatment that did not require the need to cure the disease, but it was only a natural defect that does not endanger the life of the girl. The French Court of Cassation has upheld the Paris Court's decision on the grounds that there is no need or interest to justify such operations. This decision did not consider the psychological effects or ill effects of such operations and limited the permissibility of cosmetic surgery to treat physical effects and illnesses which pose a risk to the patient's life.

The provisions of the French judiciary in that period constituted a legislative policy rejecting plastic surgeries that do not require a therapeutic need. In another decision issued by the Court of Seine in 1929 and the Court of Appeal of Paris in the same case in 1931, a woman consulted a physician for swelling in her legs. He performed a surgery to repair the shape of her legs, but the process caused the occurrence of rot resulted in amputation of her leg. The woman filed a complaint against the physician. Despite the Court's appreciation of the competence of the treating physician and that he treated the patient without pay, and according to the correct medical and scientific rules. The court considered him liable for the commission of the error, the decision of the Court of Appeal of Paris in 1931 was the start of the change in the position of the French judiciary on plastic surgery.<sup>20</sup>

After that decision, newspapers and trade unions started to exercise pressure on the French judiciary to change its rejection of plastic surgery and brought the case to the Court of Appeal of Paris. The claim based on the fact that the court should considered that the surgeon

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<sup>19</sup> Judgments of the French judiciary until the case in 1972, from the book of Nadia Mohammed Qzmar, plastic surgery legal and legal aspects, Dar al-Thaqafa for publication and distribution, Amman, first edition, 1431 H, p. 52, until 57.

<sup>20</sup> Judgments of the French judiciary until the case in 1972, from the book of Nadia Mohammed Qzmar, plastic surgery legal and legal aspects, Dar al-Thaqafa for publication and distribution, Amman, first edition, 1431 H, p. 52, until 57.

did not make a mistake if the surgery was performed by a patient's satisfaction, if the process was scientifically and practically feasible; and it can lead to the desired benefit and result.

In a famous judgment issued by the Court of Lyon in 1936, the French judiciary began to amend its rejection of cosmetic surgery where a woman's doctor treated her by using radiotherapy to remove the excess hair in her legs, then she was hit in the skin and brought a lawsuit against the doctor. The provisions of the French judiciary have stabilized towards the recognition of the legality of cosmetic surgery and considered the doctor is not criminally liable unless<sup>21</sup> ignoring the proportionality between the risks of the operation and the benefits desired before taking them.

- a) Ignoring the patient's warning of what can be expected to occur after the cosmetic surgery of complications, even if they are rare.
- b) Failure to obtain patient or guardian satisfaction prior to the operation.
- c) Regardless to the failure of the plastic surgery result, it is not enough to deny the doctor's responsibility by proving his commitment to the right assets of science.

Consequently, the French courts authorized plastic surgery. In a decision of the French Court of Cassation in 1969, a 66-year-old woman had a surgery to remove the tumor and wrinkles beneath her eyes, which causes blindness in her right eye. The court concluded that the doctor was accountable for this result, because he neglected to alert the patient of what can be expected to occur after the operation such as the occurrence of blindness, although it is rare. In 1972, the French Court of Cassation condemned the physician of cosmetic surgery in a surgery he did for a woman complaining of curvature in her nose, but the result was not satisfactory, although it was proved that he had followed the surgery according to the correct surgery rules. But he did not justify the failure of the operation.

The French judiciary has introduced a new element to be considered in assessing the proportionality of the desired benefits and potential risks in plastic surgery, namely the assessment of the patient's mental state. Even if the operation does not fail, the doctor holds accountable if this does not positively affect the patient's psychological manner. In a relatively recent judging issued by the Court of Appeal Provna on April 16, 1981, with the support of the judgment of the Court of First Instance of Nice, the fact is that an 18-year-old girl who was suffering from swelling of her cheeks that caused some mental disorders. She went to the plastic surgeon to consult him about the possibility of surgery. The surgeon decided to perform surgery by removing the fatty sacs in order to reduce her cheeks and the installation of an industrial material of silicon in the area of the chin, the surgery resulted in the several facial scars, making her unconvinced by the outcome of the operation, which prompted her to file a lawsuit against the doctor.

The Court of First Instance decided, based on the opinion of the expert, that although the aim and purpose of the operation which was to improve the shape of the face were achieved, this work has not been performed in accordance with the medical profession. This type of operation requires high skill and an appropriate age of the patient. The doctor malpractices the

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<sup>21</sup> Judgments of the French judiciary until the case in 1972, from the book of Nadia Mohammed Qzmar, plastic surgery legal and legal aspects, Dar al-Thaqafa for publication and distribution, Amman, first edition, 1431 H, p. 52, until 57.

surgery for a young girl, causing psychological damage to the girl and therefore attributed to the doctor's failure to estimate the balance between the benefits and the desired risks.<sup>22</sup>

The French court also affirmed that the patient's consent must be obtained and when a patient undergoes surgery, he shall be typically informed about the inherent dangers associated with the procedure. The patient should be given an informed insight before the operation because there is no room for urgency or necessity. The French Court of Cassation on January 14, 1992, condemned the cosmetic surgeon because instead of taking the skin from the area the pelvis, according to the agreement with his patient it was taken from the thigh area, leading to deformities in this area.<sup>23</sup>

## THE STANCE OF THE JORDANIAN JURISPRUDENCE ON PLASTIC SURGERY

The stance of the Jordanian law confirms that plastic surgery is one of the general surgical procedures that the law requires under the conditions of the law that is obliged to achieve, and then it falls under the pretext of permitting it as one of the medical works. It is one of the medical treatment branches in which the law permits doctors - in accordance with the general rules - to carry out the prescribed conditions, considering the direction of Islamic law in maintaining its purposes. It is noted that Jordanian law has dealt with errors in plastic operations and dealt with errors in general surgery.

Among the judicial procedures in the Jordanian judiciary: Considering the doctor is accountable for the deformity of the victim face. Therefore, he is obliged to pay the costs of the cosmetic operation to return the patient face to what it was like, in addition to the court's ruling in accordance with articles 266-274 of the Jordanian Civil Code.<sup>24</sup> The doctor is obliged to take care, but the required care in cosmetic surgery is more than the therapeutic surgery. Where the Jordanian Court of Cassation decided that the obligation of the physician in plastic surgery is a commitment to care not to achieve a result, but the required care in cosmetic surgery is more than in the therapeutic surgeries, since cosmetic surgery is not intended to heal the patient, but to repair distortion or cosmetic events that endanger his life.<sup>25</sup>

## CONCLUSION

This research found that, surgery, whether it is for an aesthetic purpose or for the treatment of mental illness (depression, introversion, frustration and social isolation), as well as physical illnesses (such as deformities and burns), it is necessary to perform plastic surgery to show the perfection of God's creation in a good way and to lessening the pain. By the same token, the position of the Jordanian law confirms that cosmetic surgery is a state of general

<sup>22</sup> Jumaili, A. O., 2009, Misdemeanor in Civil Medical Responsibility, Dar Al-Thaqafa, Amman, Jordan, pp. 353-354.

<sup>23</sup> Azmi, E. M (2010) Plastic Surgery between Jurisdiction and Responsibility, Dar Al-Nahda Al Arabiya, Cairo, p. 80.

<sup>24</sup> Article 266 states: "In all cases, the guarantee shall be estimated to the extent that the injured person has suffered damage and loss of profit provided that it is a natural result of the harmful act." Article 274 states: "Any person who has actually committed self-harm shall be liable to death, injury or injury, which shall be compensated for the harm caused to the victim or his legitimate heirs or to those who depend on him for the harmful act."

<sup>25</sup> Decision of the Jordanian Court of Cassation, Discrimination of Rights.

surgery that the law requires under the conditions that it is obliged to observe. The Jordanian law has dealt with errors in plastic surgery as well as errors in general surgery. Noetheless, we urge that the Jordanian legislation should follow the examples of the French and Egyptian laws and establish a law on medical accountability specifying the obligations of the doctor, especially in plastic surgery, indicating the type of risks and information to be given and the nature of the doctor's commitment. What the French legislator did. There should also be, an indepth study to establish a specialized law that protects both the doctor and the patient in Jordanian law.