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The nature of civil liability for plastic surgeons in light of Jordanian law

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Abstract: This article examines the nature of the plastic surgeon's civil liability in the light of Jordanian law. The purpose of the study is to understand the legal responsibilities of the plastic surgeon and to define its limits as well as the standards to which surgeons must adhere in the performance of their services. The document includes a review of the law Laws and regulations relating to the practice of plastic surgery in Jordan, including laws, professional codes and regulations.

The relevant legal provisions are analyzed and the duties and responsibilities that surgeons must respect are clarified. In light of the legal analysis, elements of civil liability for plastic surgeons are highlighted, including negligence, malpractice, and failure to meet accepted professional standards. The study also discusses the legal mechanisms for compensating damage suffered by patients as a result of plastic surgery. The research concludes that under Jordanian law, a plastic surgeon has a civil responsibility to patients and must uphold the standards of the profession and provide their services with care and precision. The research also highlights the importance of raising awareness of the rights and duties of both surgeons and patients and the need to develop laws and regulations that protect patients' rights and ensure their safety.

طبيعة المسؤولية المدنية لجراح التجميل في ضوء القانون الأردني

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حقوق المريض

الخلاصة: يتناول هذا المقال طبيعة المسؤولية المدنية لجراح التجميل في ضوء القانون الأردني. الغرض من الدراسة هو فهم المسؤوليات القانونية لجراح التجميل وتحديد حدودها وكذلك المعايير التي يجب على الجراحين الالتزام بها في أداء خدماتهم. وتتضمن الوثيقة مراجعة للقانون والقوانين واللوائح المتعلقة ممارسة الجراحة التجميلية في الأردن، بما في ذلك القوانين والقواعد واللوائح المهنية.

ويتم تحليل الأحكام القانونية ذات الصلة وتوضيح الواجبات والمسؤوليات التي يجب على الجراحين احترامها. في ضوء التحليل القانوني، تم تسليط الضوء على عناصر المسؤولية المدنية لجراحي التجميل، بما في ذلك الإهمال وسوء الممارسة وعدم تلبية المعايير المهنية المقبولة. كما تناقش الدراسة الآليات القانونية لتعويض الأضرار التي لحقت بالمرضى نتيجة عمليات التجميل. ويخلص البحث إلى أنه بموجب القانون الأردني، يتحمل جراح التجميل مسؤولية مدنية تجاه المرضى ويجب عليه الالتزام بمعايير المهنة وتقديم خدماتهم بعناية ودقة. كما يسلط البحث الضوء على أهمية نشر الوعي بحقوق وواجبات كل من الجراحين والمرضى وضرورة تطوير القوانين والأنظمة التي تحمي حقوق المرضى وتضمن سلامتهم.

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Introduction: The burgeoning field of plastic surgery has witnessed remarkable advancements over the years, catering to the aesthetic and reconstructive needs of individuals seeking to enhance their appearance or address physical impairments. As the demand for these procedures increases, so does the importance of ensuring the ethical and professional conduct of plastic surgeons to safeguard the well-being and rights of their patients. By examining

specific instances of malpractice and negligence within the realm of plastic surgery, this study aims to shed light on the potential legal implications faced by practitioners and the corresponding rights and remedies available to patients who have suffered harm. Moreover, beyond its legal dimensions, the paper will also delve into the moral and ethical considerations that must underpin the conduct of plastic surgeons, emphasizing the paramount importance of informed consent, patient autonomy, and the duty of care.

Research problem:

A plastic surgeon is responsible for patient safety and for providing professional and ethical health care. However, Jordan may face challenges with regard to determining the plastic surgeon's civil liability and applying it in legal reality. Among the potential problems include:

1.Lack of clear legislation: There may be a lack of laws and regulations that clearly define the civil liability of plastic surgeons in Jordan. This deficiency may cause confusion and ambiguity in laws and lead to unclear rights and duties related to civil liability.

2.Investigation complexities: Patients may have difficulty establishing medical error or negligence on the part of the plastic surgeon. It can be difficult to determine the cause of the error, determine the surgeon's liability, and obtain appropriate compensation

3.Resource Constraints: Financial constraints and limited resources may cause patients to be unable to pursue cases relating to civil liability. They may have difficulty accessing specialized lawyers, litigation costs, and obtaining necessary information and evidence

4. Awareness and Knowledge: Patients and even some surgeons may lack sufficient knowledge and awareness of the truth

research importance:

- Protecting Patients' Rights: The paper sheds light on patients' rights and the need to protect them in relation to cosmetic services. Understanding the civil

responsibility of a plastic surgeon helps to enhance the standard of healthcare and to provide safe, high-quality services to patients

- Promote professional practices: Understanding the plastic surgeon's civic responsibility helps promote professional and ethical practices in the field. It encourages doctors to adhere to international standards and to continuously improve the cosmetic services they provide

-Increase transparency and trust: Achieving the plastic surgeon's civil responsibility contributes to increasing the level of transparency and trust between doctors and patients. When there is a strong and clear legal regime governing civil liability, patients feel confident in doctors' ability to live up to expectations and provide needed care

-Improving patient safety: By understanding the plastic surgeon's civic responsibility, patient safety can be enhanced. This encourages clinicians to take precautions and provide safe and effective care, and enhances their awareness of potential risks and how to avoid them.

Research Methodology

In this topic, the civil liability of the plastic surgeon will be dealt with. This is due to the presence of two directions that discuss this issue, which raises controversy when a plastic surgeon commits medical errors during the practice of his work about determining its nature, is it a contractual or tort liability? This is what will be dealt with in this study.

First requirement: definition of the nature of liability

definition of liability language:

It is the state or characteristic of someone who is asked about a matter that is responsible for him, and it may be moral or legal. If the perpetrator of the act violates a rule of ethical rules, the responsibility is moral, and it does not exceed anything but the society's denunciation and disapproval of this act.

As for legal responsibility, it is the case in which a person commits an act that causes harm to others, so the law requires him to be held accountable.

It is divided into two types: criminal responsibility and civil responsibility. The latter is the scope of our research, so we will limit our study to.

civil liability: obligation of a person to repair the harm he has caused to another person, either by contract, which is the sanction of the failure to perform the contract, knowing that the performance of the contract is obligatory or that it is a crime, which we will explain

In this area, the question arises whether the liability of the plastic surgeon is contractual or tortious. To answer this we say that the civil jurisprudence did not agree on a unified view on this issue, so two directions emerged, one that said it was a contractual liability and the another that said liability lies with the plastic surgeon is illegal

The first paragraph: the contractual liability of the plastic surgeon

The doctor and the patient enter into a contract between them that combines the responsibilities of each of them, and it is obvious that this contractual link exists between the plastic surgeon and the patient, if the relationship takes place in the clinic, also if the plastic surgery was performed in a public or private hospital, provided that the contract was concluded with an offer from a surgeon. The patient's consent goes hand in hand with cosmetic surgery and the contractual obligation also exists when the contract is concluded. The contract took place in a private hospital. The contractual liability of the plastic surgeon arises if he fails in one of his duties towards his patient in a way that causes him harm. It is necessary to do the following:

° Existence of contract: When it is customary to have an implied (unwritten) contract between the plastic surgeon and the patient, since it is an oral contract between them; For the determination of wages and labor, the terms and conditions of employment shall be left to the principles, rules and usages of the medical and surgical profession, and this contract shall also be valid; Because a void contract triggers the provisions of tort

°Non-compliance by the plastic surgeon with the obligation imposed on him, or delay in its execution, or he has performed it, but the execution was defective

° That the plaintiff has the right to sue

° If the above conditions are met, the plastic surgeon's liability is contractual and any breach of any of the conditions transforms his liability into tort.

Paragraph2: the plastic surgeon's liability deriving from an unlawful act

The opinion established that the general principle of tort liability of the physician is a contractual liability and that tort liability is an exception to the principle, and that the plastic surgeon is at the discretion of the physician, therefore his tort liability is a contractual liability in terms of principle and tort is an exception, and tort liability is generally defined as “a person's liability for his act and liability for the actions of others, and ultimately his liability arising from things. And we can define the non-contractual liability of the plastic surgeon as: the penalty imposed on the surgeon as a result of his breach of a legal obligation, namely not to harm his patient, and in the tort the parties are in the relationship unrelated to each other the other first the damage occurs, and the criterion for distinguishing them is the presence or absence of the contractual obligation, and if this is absent The ultimate liability between the plastic surgeon and the patient involves a tort.

Accordingly, in this section we indicate the cases of tort liability:

1.First, the case of nullity of the doctor's contract: as already mentioned, for the contractual liability of the plastic surgeon to be engaged, there must be a valid contract between the surgeon and the patient.

2. Second: The case of a plastic surgeon practicing in a public hospital: the plastic surgeon practicing as a public employee; It is believed to hold a regulatory position and is subject to state employment laws. Therefore, he can only be held liable on the basis of tort.

3. Third: The case of a plastic surgeon who offers his services for free: a dispute arose at this point, some of which believed that his contractual liability existed, even if without remuneration, and some of them argued the contractual nature of the free services on the reason that this contract requires his party to comply with it, so whoever promises a free service does not create any obligation on his part, and therefore this type of obligation involves nothing but non-contractual liability. And the judiciary in France took the first position, that is, they considered it a contract, even if it was a free one, since the French Court of Cassation established that "the tradition followed by doctors of not receiving salaries from colleagues can be interpreted as a voluntary settlement of a debt based on the exchange, and therefore the contract between the two doctors does not contain such a donation.

4. Fourth - in case of harm to others as a result of the patient's intervention

5. Fifth: The case of a plastic surgeon who violates his obligation to the extent that its violation acquires a criminal character: in this case the act of the plastic surgeon falls under the banner of criminalization; The basis of liability is the act constituting the crime, so criminal liability has been established and is beyond the scope of our investigation.

These were cases of the plastic surgeon's tort liability. If the conditions for contractual liability are met, he can be held accountable on the basis of tort liability. However, the Zarqa Court of First Instance dealt with the matter and concluded that the doctor's responsibility is contractual.

We conclude that the plastic surgeon is at the judgment of the doctor and therefore his responsibility is a contractual liability according to the decision of the Zarqa first instance court when his conditions are met and we note in this respect that the Egyptian justice has followed the example of Jordanian justice, where the Egyptian Court of Cassation ruled that "the responsibility rests with the doctor chosen by the patient or his representative to treat streptoderma".

The second requirement: the elements of responsibility of the plastic surgeon

The first section: medical error corner

What is meant by medical error is: every act issued by a doctor and this act is not consistent with agreed upon medical principles or medical norms, whether this act is positive or negative.

A medical error has a material component, namely that the doctor, when treating a patient, deviates from the rules and principles of the medical profession in order to commit positive but scientifically incorrect behavior that has caused harm to the patient, or negative behavior by failing to perform a specific action necessary to avoid harm to the patient. That error has a moral element, reflected in the conscience, discernment and skill of the physician.

The doctor's intervention consists of relieving the patient's pain and trying to cure him of an illness to improve his state of health. However, the patient's intervention may lead to deterioration of the patient's health, and the deterioration is due to improper conduct of the doctor, lack of necessary effort and care, or failure to ensure safety of the patient. A court ruled on Amman's appeal in Judgment No. 30232 of 2014, noting that **the criterion for concluding medical error was the criterion of an ordinary {average} man with the same profession at the same level in the same external circumstances. Attending physician is {Discrimination Rights 1202/2016} as a type of duty The physician has a duty of care not to obtain a result as it does not require the physician to recover as this is done by the will of the doctor who arrives The Lord of the Worlds**, and in order to determine whether the doctor has made an error in the treatment of the patient, he relies on medical-technical expertise to ensure that the doctor has performed all procedures required by accepted medical protocols established by the medical community.

The second subsection: when the patient suffers harm as a result of a medical error.

The mere error of the doctor is not enough to determine his civil liability for his error. On the contrary, this error must have caused prejudice to the patient, whether it is a substantial prejudice in the deterioration of his state of health, or a loss of performance due in whole or in part to the error of the doctor, or moral damage resulting from an error.

The third section: the availability of a causal relationship between the wrong action of the doctor and the harm caused to the patient

It is necessary that the physician's error be causally connected to the harm to the patient, such that the patient suffered the harm as a result of the physician's error. Similarly, the doctor may be able to deny the causal link between his fault and the injury, and demonstrate that the injury was due to another extraneous cause unrelated to his fault, and in this case invoked medical liability. , applying the wording of {Article 261} of the Jordanian Civil Code, which states: **"If the person proves that the damage is due to an extraneous cause not attributable to him or to a sudden accident or force majeure , or to the fact of a third party or to the fact of the injured party, he is not bound by the guarantee, unless the law or the agreement provides otherwise. »**

Conclusion:

In conclusion, this research paper has delved into the complex and evolving landscape of the plastic surgeon's civil liability under Jordanian law. The analysis has shed light on the various legal principles, regulations, and guidelines that govern the practice of plastic surgery within the Jordanian context. Throughout the investigation, it became evident that plastic surgery carries inherent risks, and when performed negligently or incompetently, it can lead to severe physical, emotional, and financial consequences for the patients. The Jordanian legal system has sought to establish a framework that upholds the rights of patients and ensures accountability for medical professionals, including plastic surgeons. Various legal provisions, such as the Medical Liability Law and Consumer Protection Law, play a significant role in defining the nature of civil liability and the potential compensation that patients may be entitled to in case of medical malpractice.

Results

Based on this study, a number of conclusions can be drawn:

- The civil liability of the plastic surgeon: the study concluded that, according to Jordanian law, the plastic surgeon has a civil liability towards the patients.
- Duties and Responsibilities: The study shows that plastic surgeons have duties and responsibilities to patients, including providing complete and clear information about surgical procedures, potential risks, and expected outcomes
- Compensation and Settlement: Study demonstrates the importance of having mechanisms in place to compensate for harms patients suffer as a result of plastic surgery errors. Jordanian laws must give affected patients the right to compensation and open up fair and effective resolution mechanisms

-Negligence and Professional Error: The findings indicate that a plastic surgeon can incur civil liability as a result of professional negligence or error in the provision of medical care. The surgeon must adhere to the highest levels of accuracy and professionalism to avoid harm to patients

Recommendations

Based on this study there are some following recommendations:

-The need to create a legal and regulatory framework: Jordan needs to establish clear laws and regulations governing the practice of plastic surgery, defining the responsibilities and standards necessary to maintain patient safety and ensure the quality of services.

-Improving education and training: Plastic surgery education and training should be strengthened in Jordan to ensure that surgeons have the skills and knowledge necessary to provide services safely and effectively.

-Promote Transparency and Disclosure: Plastic surgeons in Jordan must be transparent with patients, providing them with complete and clear information about proposed procedures, potential risks, expected results, and treatment costs.

-Encourage review and oversight: The role of regulators and professional organizations in overseeing the practice of plastic surgery in Jordan should be strengthened and monitoring measures implemented to ensure compliance with ethical standards and existing legislation.

-Patient Education: Surgeons should promote patient awareness and education of the potential risks and benefits of cosmetic surgery and provide accurate and reliable information to make an informed treatment decision.

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