

A Preliminary Exploration of the Necessity of Establishing a Medical Cosmetology Arbitration System in China

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Abstract: *In recent years, Chinese people's high pursuit of cosmetology and the development of economic globalisation and informatisation have driven the rapid development of the medical cosmetology industry in China. However, at the same time, many problems have occurred in the medical cosmetology industry, which have then caused many medical cosmetology disputes as they have caused certain harm to the physical and mental health and property rights of beauty seekers. However, due to various factors, it is not easy to solve these disputes, and only relying on the power of litigation is limited, because there are some inevitable defects in litigation. In this case, through a preliminary exploration, the researcher believes that arbitration, as an alternative dispute resolution method, has unique advantages and is sometimes an effective solution. Therefore, it is necessary to establish a medical cosmetology arbitration system in China.*

Keywords: *A Medical Cosmetology Arbitration System, Arbitration, Law, Medical Cosmetology, China, Arbitration Commissions*

1. Introduction

In recent years, with the progress of economic globalisation and the development of the information age, the medical cosmetology industry in China has developed rapidly. Admittedly, this has brought freshness to Chinese citizens and made Chinese people's daily life more colourful. Some legitimate anti-aging programmes have indeed delayed people's aging and alleviated their emotions to some extent. There is no doubt that many relatively high-quality and authoritative medical cosmetology institutions have indeed met the needs of many Chinese people to beautify themselves. However, some institutions that do not have the corresponding medical cosmetology qualifications also vigorously promote some products or services that have not been approved for sale in China. Moreover, many doctors who perform medical cosmetology operations do not have the corresponding qualifications, and many channels for purchasing medical cosmetology instruments are illegal. These are undoubtedly hidden dangers for beauty seekers and often cause disputes related to medical cosmetology. In view of the chaos in the medical cosmetology industry in China, the researcher believes it is very necessary to promulgate the Medical Cosmetology Law of the People's Republic of China. At the same time, for the settlement of medical cosmetology disputes, arbitration has its unique advantages as a form of Alternative Dispute Resolution, and thus the researcher believes it is imperative to establish a medical cosmetology arbitration system in China as soon as possible. On the necessity, the researcher makes a brief analysis of the following aspects. Firstly, the researcher analyses the current situation of the medical cosmetology industry in China. Secondly, the difficulties in effectively settling medical cosmetology disputes in China are discussed. Thirdly, the researcher analyses the shortcomings of litigation resolution of medical cosmetology disputes in China. This is followed by the advantages of arbitration in solving medical cosmetology disputes in China. Then, the current situation that there is not a specialised medical cosmetology arbitration commission in China, and the advantages of establishing one are explained. Finally, it is concluded that it is imperative to establish an arbitration system for medical cosmetology in China.

2. The Current Situation of Medical Cosmetology Industry in China

With the improvement of the living standard of Chinese people, many Chinese people have solved the problem of food and clothing, and beauty has become a further pursuit of many Chinese people. In recent years, the background of economic globalisation and the arrival of the Internet era have led to

many medical cosmetology institutions opening in China, and the medical cosmetology industry has developed rapidly. There is no doubt that in China, some basic conditions should be met in order to realise legal medical cosmetology treatment. For example, Article 2 of the Administrative Measures for Medical Cosmetology Services promulgated by the Ministry of Health of the People's Republic of China gives a clear definition of medical cosmetology, cosmetic medical institutions and a medical cosmetology attending physician, which stipulates that: The term "medical cosmetology" referred to in these Measures is defined as the renovation and reshaping of physical appearance and body parts, using any traumatic or invasive medical technique, including surgery, drugs or medical devices; "Cosmetic medical institutions", as referred to in these Measures, are those whose main purpose is to provide medical cosmetic diagnosis and treatment.[1] A "medical cosmetology attending physician", as mentioned in these Measures, denotes a practising physician who fulfils the conditions laid down in Article 11 of these Measures, and is accountable for the implementation of medical beauty projects.[1] Article 5 of the Measures specifies that every application for establishing a beauty medical institution, or a medical beauty department within a medical institution, has to concurrently meet all the following conditions: (1) it must be able to cover civil liability; (2) it must clearly limit the scope of medical beauty diagnosis and treatment services; (3) it must demonstrate that it meets the Basic Standards of Medical Institutions (which will come into force on a trial basis); (4) it must meet all the conditions laid down by the administrative department of health and family planning of the central government, at the provincial level, and above.[1] Article 8 of the Measures stipulates that beauty medical institutions cannot start to offer services before they have registered with the administrative department for health and family planning, and been granted a Practice License for Medical Institutions.[1] Article 10 of the Measures states that all medical beauty projects undertaken by beauty medical institutions and medical beauty departments must be approved by the designated professional associations nominated by the registration authority, as well as being put on record with the registration authority.[1] Article 11 of the Measures sets out the conditions which the attending physician, who is responsible for carrying out medical beauty projects, must meet, while at the same time: (1) he or she must be a qualified practising physician and registered with the practising physician registration authority; (2) he or she must have work experience in related clinical disciplines (Physicians responsible for carrying out cosmetic surgery projects need to have over six years' clinical work experience in cosmetic surgery, plastic surgery and other related fields. Individuals who are responsible for carrying out cosmetic dentistry projects must have over five years' professional clinical work experience in stomatology or cosmetic dentistry. Those physicians responsible for carrying out cosmetic Chinese medicine and cosmetic dermatology projects need to have over three years' clinical work experience in either Chinese medicine or dermatology.); (3) he or she must have medical facial make-up training or have undertaken additional studies and have a qualification in the field, or have worked for over a year in clinical medical beauty; (4) he or she must meet any other conditions laid down by the health and family planning administrative department of the provincial government.[1] Article 12 of the Measures states that a practising doctor who does not meet the requirements for attending physicians set out in Article 11 of the Measures can take part in medical beauty clinical technical services, if he or she works under the guidance of the attending physician.[1]

Undoubtedly, many legal and relatively high-quality authoritative medical cosmetology institutions with corresponding qualifications have indeed solved the needs of many Chinese people to beautify themselves to some extent. However, in China, despite the above-mentioned relevant regulations, many illegal medical cosmetology phenomena have appeared in recent years. Firstly, some staff members of medical cosmetology institutions do not have the corresponding qualifications but conduct illegal medical cosmetology operations.[2] For example, some cosmetologists do not have the corresponding qualification certificates, but engage in medical cosmetology operations that exceed their own cosmetology level. The slight consequences of these improper operations are a failure to meet the beauty seekers' pursuit of beauty and a failure to achieve the effects that the beauty seekers wanted. The serious consequences are damage to the property of those who pursue beauty, and the causing of irreparable damage to their bodies, minds and their families. Secondly, the sanitary conditions of medical cosmetology in some such institutions are limited, and cannot reach the corresponding level of cleanliness, neatness and low bacterial survival rate. In the process of an operation, many medical cosmetology operations need to clean and open pores, as it is beneficial to help skin care products penetrate into the skin effectively, resulting in good results. However, when the sanitary environment for medical cosmetology is poor and many bacteria are exposed in the air, the skin can easily inhale a large number of bacteria while the pores of the beauty seeker are open, which is very unfavourable to the skin. In the end, not only does this not care for or improve the skin, it may even deteriorate and make the skin worse. This not only wastes time and money, but also affects the mood. Thirdly, the instruments used in some medical cosmetology institutions do not meet national standards. Some instruments are imported from abroad, but these imported instruments have not been approved by China to allow the import of

these products. Namely, China has not allowed these instruments to be sold in China or used to provide paid services for those seeking beauty. It is illegal in China to use these instruments to provide paid services for those seeking beauty or to sell these instruments, as they do not meet the import standards required, these instruments are potentially unsuitable for the skin of the Chinese race, and may even cause fatal damage to the skin, which may affect the beauty seekers' family atmosphere and employment in the long run. Finally, some consultants in medical cosmetology institutions do not inform the beauty seekers of some situations that they are not suitable for doing related projects when accepting the consultation, which leads to the beauty seekers doing a project for which their physical condition is unsuitable. Namely, these people fail to inform the beauty seekers before the operation of a project, and the beauty seekers themselves have limited knowledge of professional information in the field of medical cosmetology. After all, the beauty seekers are not professionals who have studied medical cosmetology, and thus it is understandable that they do not know whether their physical conditions need to be evaluated before doing a project, and thus the information that beauty seekers and medical cosmetology doctors hold regarding medical cosmetology is asymmetric. This is similar to the information asymmetry among insurance agents, policyholders and the insured in the insurance industry. Therefore, as a professional in the field of insurance, an insurance agent has an obligation to enquire about the health of the insured before the applicant applies for insurance in principle.[3] Then these beauty seekers undertake related projects without knowing whether a certain project is suitable for their own bodies, which may lead to serious consequences such as physical injury or even death.

In addition, at present, although there is already a document titled "Administrative Measures for Medical Cosmetology Services" published by the Ministry of Health, its legal effect is limited and the level of effectiveness is not high enough; Even though there is the Consumer Protection Law of the People's Republic of China promulgated by the Standing Committee of the National People's Congress, there is not yet a complete "Medical Cosmetology Law of the People's Republic of China" which has a relatively high level of legal effect issued by the highest authority, such as the National People's Congress, and is specifically aimed at the medical cosmetology industry. After all, although medical cosmetology can be broadly classified as medical treatment, the concept behind it is radically different. The concept of medical cosmetology has its own particularity. Therefore, it is necessary to issue a legal standard with relatively high legal effect specifically for the medical cosmetology industry. Admittedly, in the early years, due to the slow development of medical cosmetology industry in China, the frequency of disputes in the field of medical cosmetology was naturally relatively low, and thus the legislative value and significance in the field of medical cosmetology industry were not so obvious. Moreover, the promulgation of a law is not the result of a sudden impulse, but requires many years of reflection of the social status quo, the performance of the frequency of related social cases, the results of interviews and investigations of citizens, as well as many studies, discussions and careful consideration by academic experts and legal professionals in the practical field, so as to formulate a relatively complete law that is applicable to China's national conditions and can be relatively stable and applied for a relatively long time. However, things are different now. According to the current situation, there are many medical cosmetology-related disputes and many differences in case handling results, and with the close correlation among medical cosmetology, personal and property interests, and the safety of the Chinese people, it is necessary to quickly formulate a special law for the medical cosmetology industry. The enactment of this law in the People's Republic of China is one of the aspects envisaged in the establishment of a medical cosmetology arbitration system in China.

3. The Difficulties in Effectively Settling Medical Cosmetology Disputes in China

Medical cosmetology disputes are different from ordinary medical disputes. Medical cosmetology disputes are special, and it is not easy to deal with them. When a medical cosmetology dispute occurs, professional medical cosmetology knowledge is needed for accurate judgement of accidents. Generally speaking, one party is a medical cosmetology institution, and the other party is a beauty seeker who accepts medical cosmetology. To some extent, the mastery of medical cosmetology information by both parties is asymmetric, that is, in most cases, the institution holds more professional medical cosmetology knowledge than the beauty seekers, even though it may deliberately conduct illegal and improper medical cosmetology operations. However, the time and energy of beauty seekers receiving medical cosmetology are limited, and most of them are not professionals in the medical cosmetology industry. They typically only possess a superficial understanding of medical cosmetology, often gleaned in their spare time through some network or media. Some knowledge related to medical cosmetology is inaccurate, because the threshold for self-media is relatively low, and many online celebrities are outspoken and even feel that they do not need to be responsible for what they have said. If these beauty seekers blindly listen to

some inaccurate information and do not have the ability to distinguish the accuracy of information when consulting medical cosmetology institutions, then they are likely to be deceived by medical cosmetology institutions and buy services that are not suitable for their own bodies or perhaps those without state approval. Moreover, the causes of medical cosmetology disputes are diverse and complicated. For example, some doctors failed to inform the beauty seekers of the precautions after surgery in time, which has led to a series of sequelae for beauty seekers shortly after surgery. In another example, a doctor informed the postoperative precautions in time and in detail, but the beauty seeker did not remember these precautions, which resulted in complications and involved the problem of accountability. If the medical cosmetology institution failed to sign a contract with the beauty seeker to confirm that the doctor had fulfilled the obligation to inform him or her when performing the obligation of informing him or her after the operation, but only verbally informed and did not keep any evidence, such as audio or video recordings, then the medical cosmetology institution would appear to be relatively passive when there was a real dispute. Therefore, in real life, if a dispute is solved by litigation, the comprehensive quality of judges is required to be relatively high. Generally speaking, judges should not only have a solid legal and professional knowledge base, but also have knowledge related to medical cosmetology. However, there are only a few compound talents with dual backgrounds in law and medicine in the circle of judges in China, and thus it is relatively difficult to efficiently solve such disputes by litigation.[4]

4. The Shortcomings of Litigation Resolution of Medical Cosmetology Disputes in China

One cannot deny that litigation, as a traditional way of settling disputes, has a strong binding force on both parties. However, it also has shortcomings that have to be admitted. In general, the trial process takes a long time, and the efficiency of the lawsuit is relatively low; and a lot of effort is often required to solve the case thoroughly.[4] Therefore, it is true that in the process of solving medical beauty disputes, if litigation is adopted, the above-mentioned shortcomings will also exist.

5. The Advantages of Arbitration in Solving Medical Cosmetology Disputes in China

Medical cosmetology can be considered as medical treatment in a broad sense. In the Arbitration Law of the People's Republic of China, medical disputes are not expressly excluded from the scope of disputes that can be resolved through arbitration.[5] Therefore, to some extent, it is plausible for medical cosmetology disputes to be resolved through arbitration. Compared with litigation, commercial arbitration, as one of the alternative dispute settlement methods, has the characteristics of high efficiency, strong confidentiality and maximum protection of party autonomy.[6] The parties involved in commercial arbitration can conclude an arbitration agreement or an arbitration clause in the contract before or after the occurrence of a dispute.[7] In this way, once a dispute occurs, the arbitration method can be used to solve the dispute.[7] The following is an analysis of the unique advantages of arbitration in the settlement of medical beauty disputes. Firstly, the arbitration process takes a relatively short time. Secondly, arbitration is highly confidential.[6] Medical cosmetology disputes involving the personal privacy of beauty seekers are not suitable for public settlement. Once such disputes are publicly arbitrated, harm may be caused to the physical and mental health of beauty seekers. In addition, since the principle of party autonomy is very important in commercial arbitration, the contents of the arbitration clause or arbitration agreement can be agreed by the parties, and the parties can choose the arbitration institution, arbitrator and arbitration language by themselves.[6] In this way, the autonomy of the parties can be guaranteed to the greatest extent, which can achieve self-autonomy to a certain extent for both medical cosmetology institutions and beauty seekers who receive their services, which is of great help in appeasing the mood of beauty seekers involved in disputes and preventing them from losing their senses.

However, the current Arbitration Law of the People's Republic of China does not explicitly include medical disputes including medical cosmetology disputes into the scope of disputes that can be addressed by arbitration.[5] Therefore, whether arbitration can be applied to solve medical disputes in daily life in China is widely debated in both academic and practical circles in China. However, based on the above analysis, the researcher is inclined to the view that arbitration can be applied to solve medical disputes including medical cosmetology disputes in China. Therefore, for the next revision of the Arbitration Law of the People's Republic of China, the researcher hopes that explicitly bringing medical cosmetology disputes into the category of disputes that can be addressed by arbitration can be considered.

6. The Current Situation of No Specialised Medical Cosmetology Arbitration Commissions in China and the Advantages of Establishing a Medical Cosmetology Arbitration Commission in China

If establishing a medical cosmetology arbitration system in China is the aim, it is necessary to set up a special medical cosmetology arbitration commission. Medical cosmetology industry is an extremely specialised industry, and its knowledge is all-round, multi-level and three-dimensional. To be a qualified worker in the medical cosmetology industry, the requirements for the quality of personnel are extremely high. The comprehensive quality of such groups should be extremely strong. Not only should they have a high ideological and moral level, but also their basic professional knowledge should be very solid, their working attitude should be serious and rigorous, and they should have a strong sense of responsibility and mission. As soon as a medical cosmetology arbitration commission needs to be established in China, due to the particularity and the complexity of knowledge in the field of medical cosmetology, such a commission should attach great importance to the selection of arbitrators, because in terms of the basic judgement of medical cosmetology disputes, the arbitrators need to understand both the operational and technical details involved in medical cosmetology programmes, and have relatively clear cognition of the physiological structure of the skin, so that the facts can be relatively accurately identified and a relatively fair judgement can be made on the liability for disputes. It is precisely because of the particularity of this industry that it is necessary to set up arbitration commissions to handle such disputes. At present, there are arbitration commissions specialising in maritime disputes in China, such as the China Maritime Arbitration Commission. This is also due to the particularity and complexity of the maritime industry, and because this way of setting up can make dispute resolution more professional and more efficient, it is also conducive to giving full play to the advantages of maritime law talents who have special skills in the maritime field and are proficient in English, whilst also building a platform for them to display their talents. During the establishment of China's medical cosmetology arbitration commissions, such as the China Medical Cosmetology Arbitration Commission, such the commission can recruit Chinese citizens with both domestic and foreign medical cosmetology and legal professional education backgrounds as arbitrators, since, to a certain extent, compared with people with a single subject background, they can better understand the professional knowledge in the medical cosmetology industry and the field of law, and can judge the facts of the corresponding disputes or the application of the laws in a relatively accurate and detailed manner. This is also conducive to further training a large number of compound talents with cross-disciplinary backgrounds in medicine and law, such as those who major in health law or medical law, giving full responsibility to their role and allowing them to contribute their own strengths to the resolution of medical cosmetology disputes in China.

7. Conclusion

In conclusion, in view of the current development of the medical cosmetology industry in China and the advantages of arbitration systems, it is urgently necessary to establish a separate and specialised arbitration system for medical cosmetology dispute resolution.

References

- [1] Ministry of Health of the People's Republic of China, *Measures for the Administration of Medical Cosmetology Services* (2002).
- [2] Shaowei Zhang and Yunchuan Zhang, 'From Plastic Surgery and Reconstructive Surgery in China to Medical Cosmetology in China — Review and Progress of Plastic Cosmetology in China since the Founding of New China 70 years ago' (2019) 9 *China Medical Cosmetology* 1-2.
- [3] Standing Committee of the National People's Congress, *Insurance Law of the People's Republic of China* (1995).
- [4] Longting Xie, Yueying Wu and Dacheng Mei, 'Analysis of Legal Problems in Medical Cosmetology Disputes' (2020) 12 *Medicine and Law* 42-47.
- [5] Standing Committee of the National People's Congress, *Arbitration Law of the People's Republic of China* (1995).
- [6] Zixuan Zhou, 'Exploring the Advantages and Application Suggestions of Commercial Arbitration' (2021) 4 *Zhongguancun* 74-76.
- [7] Redfern and Hunter, *Law and Practice of International Commercial Arbitration* (6th edn, OUP 2015) 124.