

# Legal Application of Medical Beauty Disputes

Duo Yu

*Jilin Justice Officer Academy, Changchun, Jilin, 130062, China*

**Abstract:** *With the development of social economy, people have higher and higher requirements for personal image, which is followed by the increasing demand for medical beauty in China. While the public is becoming more beautiful, we should also note that the social disputes arising therefrom are increasing. Although medical cosmetology is closely related to medical treatment, it is very different from traditional medical disputes in the causes of disputes and types of damage. Therefore, it is of great significance to analyze the causes and legal application of medical cosmetology disputes.*

**Keywords:** *Legal application, Medical cosmetology disputes, Life beauty*

## 1. The concept, characteristics and causes of medical cosmetology

### 1.1. Medical cosmetology concept

The term "beauty" often used in our life includes medical beauty and life beauty. According to Article 2 of Chapter 1 of Measures for the Administration of Medical Beauty Services of the Health Commission, the concept of medical beauty refers to the repair and reshaping of people's appearance and various parts of the human body by using surgery, drugs, medical devices and other traumatic or invasive medical technologies and methods. Life beauty is different from medical beauty, although its purpose is also to enhance people's external aesthetic feeling, but its treatment is not invasive, only to the skin or body care, does not belong to the medical project. Therefore, this paper only discusses the medical beauty disputes, and does not include the legal disputes arising from life beauty.

### 1.2. Medical cosmetology features

#### 1.2.1. High degree of privatization of business entities

Private hospitals are the main force in China's huge medical and American market. Most private hospitals are profit-making legal persons. Whether they can survive in the cruel competitive environment depends entirely on the hospital's operating conditions. Although doctors have professional knowledge, they do not have professional promotion and management ability. Therefore, there is an intermediate link between doctors and beauty seekers, that is, consultants. From the nature, consultants are equivalent to sales personnel, packaging and selling medical beauty projects. Consultants bear the pressure of hospital performance, so in order to promote the project, they often exaggerate the project effect, which is easy to cause disputes.

#### 1.2.2. Different service objects

The service objects of traditional medical projects are patients who have physiological diseases and need treatment. From the perspective of the recipients of medical beauty projects, except for a small number of medical beauty repair operations caused by pathological or accidental trauma, the vast majority of medical beauty recipients do not have physiological diseases themselves, and receive treatment for the sake of better appearance. Then, in medical and beauty disputes, there will be two situations. The first one is that the medical and beauty projects do produce physiological defects that do not exist originally, such as scar hyperplasia, organ physiological damage and other medical damage. The second situation is that although there is no physiological injury, the postoperative results do not meet their aesthetic needs and expectations, resulting in disputes.

#### 1.2.3. Medical beauty projects are complicated

According to the analysis of new oxygen data, the number of legal medical and American institutions in China is about 13000 at present. The harsh market competition makes medical and American institutions need to constantly increase the publicity cost to attract customers. In this market environment,

the medical and beauty industry inevitably has excessive packaging problems. China's Consumer Rights and Interests Protection Law clearly stipulates that consumers have the right to know and have the right to know the true situation of their purchase, use of goods or acceptance of services. However, under different advertising and packaging, the same project may have several different names, which is prone to fraud risk.

### ***1.3. The main cause of medical cosmetology disputes***

#### ***1.3.1. Medical source dispute***

Medical cosmetology projects can be generally divided into three categories: surgery projects, injection projects and laser projects. Iatrogenic disputes are due to the personal and property damage caused by the medical staff of medical institutions in the process of diagnosis and treatment. There are two main reasons for iatrogenic disputes. The first one is due to the negligence of doctors, such as scar hyperplasia caused by facial surgery and body depression caused by liposuction surgery. If this kind of medical behavior meets the requirements of the liability for medical technical damages, it is a civil tort. The second is the dispute of surgical effect. Most of the patients in medical cosmetology programs do not have pathological facial defects, and the purpose of diagnosis and treatment is to make their face or body more beautiful. In such disputes, there is no actual personal injury, but the appearance has not been improved or even due to medical disfigurement. The liability for breach of contract shall apply to the fault behavior of the medical beauty service providers in such disputes.

#### ***1.3.2. Non-iatrogenic disputes***

Non-iatrogenic disputes refer to that the emergence of such medical cosmetology disputes is not caused by the diagnosis and treatment behavior of medical personnel, but is caused by factors other than the medical behavior. This kind of dispute mainly has the following several types, the first one is the medical beauty qualification problem. The medical beauty industry has developed rapidly in China and is highly profitable, which makes many unqualified medical beauty clinics and even life beauty salons conduct illegal diagnosis and treatment behaviors. China implements the surgical classification system. The hospitals with different qualifications can carry out different surgical activities, and there are great potential risks in operating without a license or operating beyond the business scope. The second is the false propaganda, the unauthorized replacement of imported products with domestic products, or selling "three no" products, such behavior is more identified as consumer fraud. In the fierce market competition, in order to attract customers, private hospitals often exaggerate the treatment effect in the publicity, and adopt the low-price drainage strategy. In order to maintain the cost, some small and medium-sized hospitals may have shoddy products or even the use of "three no products" and thus cause disputes. The third kind of dispute is that the customer estimates the effect of diagnosis and treatment too much, and does not achieve the desired effect after the diagnosis and treatment, causing customer complaint disputes. In this type, the hospital has no medical fault, no exaggerated publicity, is the customer cognition deviation, such disputes are not within the scope of this article.

## **2. Legal application of medical beauty disputes**

### ***2.1. Medical malpractice liability***

According to Regulations on the Handling of Medical Accidents, the medical accident refers to an accident in which a medical institution and its medical personnel violate medical and health management laws, administrative regulations, departmental rules, medical and nursing norms and routines, and negligently cause personal injury to patients. Article 1218 of the Civil Code stipulates that if a patient suffers damage in the course of diagnosis and treatment and the medical institution or its medical personnel are at fault, the medical institution shall bear the liability for compensation. According to the theory of tort law, the constitution of fault tort must have four elements: fault, illegal act, damage result and causality. The constitution of medical accident stipulated in Regulations on the Handling of Medical Accidents is consistent with it. Therefore, the identification of "medical accident" must constitute "civil fault tort". [1]

The biggest difference between medical beauty tort and other tort is that it involves medical science and is professional. It can not be judged by ordinary people's common sense and logic. Patients sometimes claim damages only when they see the adverse consequences. But what is the cause of the adverse consequences, or is it the fault of the medical side? Or did the customer fail to follow the doctor's

instructions after the operation? This often involves the problem of multiple causes and one effect. Therefore, in the fault principle, the victim needs to be identified by the judicial identification institution as the causal relationship and the fault behavior of the doctor. Even in the fault presumption liability, the causal relationship needs to be identified. At present, there are two types of institutions that can conduct medical damage identification in China. The first type is the judicial identification institution, and the second type is the medical association at all levels. The "judicial fault identification" of the judicial identification institution and the "medical accident identification conclusion" of the medical association have the legal effect of proving the occurrence of medical damage.

To sum up, if a medical accident caused by a hospital's fault causes personal injury to the victim, a lawsuit of infringement can be filed on the ground of medical tort.

## ***2.2. Infringe on the patient's physical rights***

Article 1219 of the Civil Code stipulates that patients have the right to informed consent according to law. Medical personnel shall explain the patient's condition and medical measures during diagnosis and treatment activities. In principle, they shall respect the patient's right to know and independent decision-making according to law. The reason why the law creates the obligation of informing medical institutions is that the damaging medical behaviors should have the basis of legitimacy, and the patient's self-determination right is the source of legitimacy.

As a specific personality right, body right includes body integrity interests, body integrity interests and body dominance interests. It infringes the patient's body self-determination right, which in essence infringes the patient's body right. The consequences of medical damage can be divided into real interests damage and expected interests damage. The damage caused by medical negligence and medical products is generally manifested as real interests damage. For this, the relevant provisions on medical damage infringement in the previous article can be directly applied.

The damage caused by the failure of medical institutions to fulfill the obligation of disclosure may also be the damage of expected benefits, mainly manifested as the loss of the best treatment opportunity, the best treatment plan and the loss of foreseeable benefits. For example, in order to attract customers, the consultant lied that the patient could recover within a week after the operation, but the actual recovery period was half a month, and the patient lost the interview opportunity.

In this case, medical institutions violate the provisions and infringe on the informed consent right of patients, causing damage to patients. However, this damage is not directly personal damage to patients, nor is it caused by the medical behavior fault of medical institutions. There is no causal relationship between the damage consequences and medical behavior. Therefore, Article 17 of the interpretation of the Supreme People's Court on Several Issues Concerning the Application of Laws in the Trial of Medical Injury Liability disputes clearly stipulates that medical personnel who violate the obligation of disclosure but do not cause personal injury to patients, and patients who request medical institutions to bear the liability for damages shall not be supported. Therefore, for the damage caused by medical institutions or obligatory personnel to patients' informed consent, the judicial practice tends to apply the principle of fairness, and medical institutions should give appropriate economic compensation or compensation to patients.

## ***2.3. Infringe on consumers' right to know***

Because the medical behavior itself has the attribute of contract service, the disputes caused by medical personnel infringing on the patient's right to know can also be applied to Consumer Rights and Interests Protection Law. Such a case is listed in the typical cases of consumer rights and interests protection issued by the supreme law in 2022.

Zou had bilateral lower eyelid repair in a medical and American institution in Beijing. After the operation, Zou appeared local depression of bilateral lower eyelids, scar deformity, and short, round and blunt external corners. Since then, Zou has repaired six times, but there is still no improvement. Zou then filed a lawsuit with the court to demand that the institution compensate for his medical expenses, work delay expenses, spiritual damage compensation and other losses, and demand that the applicable consumer rights and interests protection law compensate him three times for his operation expenses.

For this typical case, we should first determine whether Zou is a consumer? Is Consumer Protection Law applicable? In this case, Zou is a healthy person who accepts beauty services in order to meet the life needs of the pursuit of beauty. It belongs to consumer medical beauty and has the characteristics of

consumers; The business purpose of this medical and beauty institution is to obtain profits, and it has the characteristics of an operator. Where a consumer accepts services provided by a business operator for living consumption, it shall be subject to the adjustment of the consumer rights and interests protection law [2].

Secondly, how does Consumer Protection Law apply? It is found that the medical and beauty agency has repeatedly been subject to administrative punishment for the false publicity acts such as the content of the medical advertisement published by the medical and beauty agency is inconsistent with the content of the advertisement approved by the health administrative department, and the advertising language is not true. Zou was misled by the above advertisement and accepted the service. Therefore, the medical and beauty agency has the fraudulent act of false publicity. The provisions of the consumer rights and interests protection law on punitive compensation shall be applied, and the medical and beauty agency shall compensate Zou three times for the operation expenses.

Finally, if the consumer rights and interests protection law has been applied, can the relevant provisions of the aforementioned medical injury infringement be applied? In this case, the medical and beauty institutions made mistakes in their diagnosis and treatment, but Zou's repair behavior in other medical and beauty institutions after the operation has indeed changed the operation results of the medical side. Therefore, the court decided that the medical and beauty institutions should bear the compensation liability according to the proportion of 60% of the fault liability.

### 3. Conclusion

Medical cosmetology disputes are often caused by false publicity of medical cosmetology and non-standard behavior of diagnosis and treatment. The inclusion of medical beauty disputes into the scope of medical damage liability disputes and the examination of evidence according to the standards of medical damage liability disputes are conducive to urging medical beauty institutions to strengthen the production and preservation of medical documents and standardize their diagnosis and treatment activities. In addition, bringing consumer medical and beauty disputes into the scope of the law on the protection of consumers' rights and interests and applying the provisions of punitive compensation, and strengthening the sanctions against commercial fraud can not only serve as a warning to medical and beauty institutions, prevent and deter their illegal acts, but also maintain the integrity and order of the medical and beauty market, which is conducive to effectively protecting the legitimate rights and interests of consumers.

### References

- [1] Chen T. *On the Right Relief Approach of Medical Beauty Disputes -- Based on the Development of Contract and Tort Concurrence [J]. China's Health Legal System, 2021, (4).28.*
- [2] Xie L, Wu Y, Mei D. *Analysis of Legal Issues in Medical Beauty Disputes [J]. Medicine and Law, 2020, (1).37.*