



How to cite this article:

Mousavi, J., Forouzesh, M., Mohammadnejad, P., & Golriz, A. (2026). Analysis of the Differences in Criminal Liability of Physicians in Cosmetic Surgery Compared to Other Types of Surgery. *Journal of Historical Research, Law and Policy*, 4(5), 1-18. <https://doi.org/10.61838/jhrp.252>



Article history:
Original Research

Dates:

Submission Date: 18 November 2025

Revision Date: 14 February 2026

Acceptance Date: 21 February 2026

First Publication Date: 22 February 2026

Final Publication Date: 01 September 2026

Analysis of the Differences in Criminal Liability of Physicians in Cosmetic Surgery Compared to Other Types of Surgery

1. Jamshid. Mousavi¹: PhD Student, Department of Law, ST.C, Islamic Azad University, Tehran, Iran
2. Mahdi. Forouzesh²: Department of Law, ST.C., Islamic Azad University, Tehran, Iran
3. Parviz. Mohammadnejad³: Department of Law, ST.C., Islamic Azad University, Tehran, Iran
4. Amin. Golriz⁴: Department of Law, ST.C., Islamic Azad University, Tehran, Iran

*corresponding author's email: mehdi.forouzesh@iau.ir

ABSTRACT

Criminal liability in medical practice represents a critical legal mechanism designed to ensure accountability and protect patient safety, particularly in surgical interventions that involve inherent risks to bodily integrity. While criminal liability principles apply to all physicians, cosmetic surgery presents unique legal challenges due to its elective nature, absence of therapeutic necessity, and heightened patient expectations. Unlike therapeutic and reconstructive surgeries, which are performed to treat disease, restore function, or prevent deterioration of health, cosmetic procedures are undertaken voluntarily to improve physical appearance. This distinction fundamentally affects the legal justification for surgical intervention, the standard of professional care required, and the allocation of legal responsibility. The present study aims to analyze and explain the differences in criminal liability of physicians in cosmetic surgery compared to other types of surgical procedures. This research adopts a doctrinal and analytical legal method, examining criminal law principles, medical law standards, and professional obligations governing surgical practice. The findings indicate that cosmetic surgeons face greater exposure to criminal liability due to the lack of medical necessity, stricter standards of care, increased importance of informed consent, and heightened judicial scrutiny in cases involving adverse outcomes. In cosmetic surgery, informed consent plays a decisive role in establishing legal justification, yet it does not eliminate liability in cases of negligence, lack of competence, or violation of professional standards. Furthermore, the allocation of legal risk in cosmetic surgery shifts more heavily toward the physician, as the elective nature of the procedure removes the protective justification associated with therapeutic necessity. The study concludes that cosmetic surgery represents a legally sensitive area of medical practice, requiring physicians to exercise exceptional professional diligence, ensure full compliance with legal and ethical standards, and maintain strict adherence to professional competence in order to avoid criminal liability and protect patient rights.

Keywords: *Criminal liability, Cosmetic surgery, Medical negligence, Physician responsibility, Medical law, Surgical liability, Informed consent, Therapeutic surgery*

Introduction

Criminal liability represents one of the fundamental pillars of criminal law and serves as a legal mechanism through which individuals are held accountable for conduct that violates protected legal interests and causes harm



to others. In its classical formulation, criminal liability arises when an individual engages in prohibited conduct accompanied by fault, resulting in harm recognized by law as punishable. Criminal law scholars emphasize that liability is grounded in the existence of three essential elements: a legal provision defining the prohibited conduct, the material occurrence of harmful behavior, and the presence of fault in the form of intent or negligence (1). These foundational principles apply equally to medical practice, where physicians, despite acting with therapeutic intent, may incur criminal responsibility when their actions deviate from professional standards and result in injury or death. The application of criminal law to medical practice reflects the legal system's commitment to protecting bodily integrity and ensuring accountability in professions involving significant risks to human life (2).

Medical criminal liability occupies a particularly complex position at the intersection of criminal law, medical ethics, and professional regulation. Unlike ordinary criminal conduct, medical interventions are inherently intrusive and often involve actions that would otherwise constitute assault or bodily harm if performed outside a therapeutic context. Medical law recognizes that such interventions are justified only when performed within the scope of professional competence, with valid patient consent, and in accordance with accepted scientific standards (3). When physicians fail to comply with these conditions, their actions may lose legal justification and become subject to criminal sanctions. This principle reflects the broader legal doctrine that professional status does not exempt individuals from criminal responsibility but instead imposes heightened obligations due to the trust placed in them by society (4).

The importance of criminal liability in medical practice is further reinforced by the ethical duties imposed on healthcare providers. Medical ethics requires physicians to act in the best interests of patients, avoid causing harm, and maintain professional competence throughout their practice. These ethical obligations are reflected in legal norms, such as the requirement to obtain informed consent and adhere to professional standards of care (5). When physicians violate these ethical and legal duties, their conduct may constitute negligence, recklessness, or professional misconduct, thereby triggering criminal liability. Legal scholars emphasize that medical negligence becomes criminally relevant when it involves a gross deviation from accepted professional standards and results in significant harm to the patient (6). This underscores the central role of professional competence and adherence to medical standards in determining criminal responsibility.

The increasing complexity of modern healthcare has significantly expanded the scope of potential criminal liability for physicians. Advances in surgical techniques, anesthesiology, and medical technology have enhanced the ability to perform complex procedures but have also introduced new risks and potential sources of error. The use of sophisticated medical devices and invasive procedures increases the likelihood of adverse outcomes, particularly when performed without adequate training or supervision (7). At the same time, patients have become more informed about their legal rights and are more willing to pursue legal action when they perceive medical errors or negligence. This growing awareness has contributed to an increase in criminal complaints against physicians, particularly in high-risk medical fields such as surgery, where errors can have severe and irreversible consequences (8).

Among surgical disciplines, cosmetic surgery has emerged as one of the most legally sensitive areas due to its elective nature and the absence of medical necessity in many cases. Unlike therapeutic interventions aimed at treating illness or injury, cosmetic procedures are performed primarily to enhance physical appearance and satisfy patient preferences. This distinction raises important legal questions regarding the justification of such procedures and the extent of physician responsibility for adverse outcomes. Legal commentators note that the absence of

therapeutic necessity in cosmetic surgery places greater emphasis on professional competence and informed consent, as the justification for exposing patients to surgical risks becomes less compelling (9). Consequently, cosmetic surgeons may face stricter legal scrutiny and greater exposure to criminal liability compared to physicians performing medically necessary procedures.

The rapid expansion of cosmetic surgery represents one of the most significant developments in contemporary medical practice. Advances in surgical techniques, anesthesia, and medical technology have made cosmetic procedures safer and more accessible, leading to increased demand worldwide. Cosmetic surgery has evolved from a specialized medical practice into a widespread industry involving a wide range of procedures, including rhinoplasty, liposuction, breast augmentation, and facial reconstruction. This growth has been driven by social, cultural, and technological factors, including increased emphasis on physical appearance, media influence, and improved access to medical services (10). As cosmetic surgery becomes more common, the legal system faces increasing challenges in regulating this field and ensuring accountability for medical errors.

In Iran, the growth of cosmetic surgery has been particularly notable, with the country becoming one of the leading global centers for certain procedures, especially rhinoplasty. This trend reflects broader societal changes, including increased attention to aesthetic standards and greater availability of specialized medical services. Legal scholars have observed that the expansion of cosmetic surgery in Iran has been accompanied by a corresponding increase in legal disputes involving allegations of medical negligence and professional misconduct (11). The growing number of cosmetic procedures has created new legal challenges, particularly in defining the scope of physician responsibility and determining appropriate standards of care.

One of the defining characteristics of cosmetic surgery is its elective nature. Unlike therapeutic procedures, cosmetic surgeries are typically performed at the patient's request rather than in response to medical necessity. This distinction has important legal implications because it affects the justification for medical intervention and the standard of care expected from physicians. In therapeutic contexts, medical necessity provides strong legal justification for surgical intervention, even when risks are involved. However, in cosmetic surgery, the absence of medical necessity weakens this justification and increases the importance of patient consent and professional competence (12). As a result, cosmetic surgeons must exercise greater caution and ensure that patients fully understand the risks and potential outcomes of the procedure.

The elective nature of cosmetic surgery also affects patient expectations and legal liability. Patients undergoing cosmetic procedures often have high expectations regarding aesthetic outcomes, and dissatisfaction with results may lead to legal claims even in the absence of clear medical negligence. This creates a unique legal environment in which physicians must navigate both medical and legal risks. Legal authorities emphasize that cosmetic surgeons are required to provide detailed information about potential risks and limitations to ensure valid informed consent (13). Failure to fulfill this obligation may expose physicians to criminal liability, particularly when adverse outcomes occur.

The distinction between cosmetic surgery and other types of surgery, particularly therapeutic and reconstructive procedures, is central to understanding differences in criminal liability. Therapeutic surgery is performed to treat illness, correct medical conditions, or prevent further harm, while reconstructive surgery aims to restore function or appearance following injury, disease, or congenital abnormalities. These procedures are generally considered medically necessary and are therefore legally justified when performed in accordance with professional standards

(14). The presence of medical necessity provides a strong legal basis for surgical intervention and reduces the likelihood of criminal liability, provided that the physician adheres to accepted medical practices.

Medical necessity plays a crucial role in determining the legality of surgical interventions. Legal doctrine recognizes that physicians may perform invasive procedures without incurring criminal liability when such procedures are necessary to protect the patient's health or life. This principle is grounded in the broader concept of legal justification, which permits actions that would otherwise be considered harmful when performed for legitimate purposes (15). In therapeutic and reconstructive contexts, the risks associated with surgery are justified by the potential benefits of treatment, and physicians are evaluated based on whether they acted in accordance with accepted medical standards.

In contrast, cosmetic surgery lacks the element of medical necessity and is performed primarily to enhance physical appearance rather than to treat medical conditions. This distinction has significant legal implications because it alters the balance between risks and benefits. Without therapeutic justification, the risks associated with cosmetic surgery must be justified solely by patient consent and physician competence. Legal scholars emphasize that this increases the physician's duty of care and requires stricter adherence to professional standards (16). Cosmetic surgeons must ensure that patients are fully informed and that procedures are performed with the highest level of professional competence to avoid legal liability.

The absence of medical necessity also affects judicial evaluation of cosmetic surgery cases. Courts are more likely to scrutinize cosmetic procedures closely, particularly when adverse outcomes occur. This heightened scrutiny reflects the view that exposing patients to surgical risks without therapeutic necessity requires stronger legal justification. Legal commentators note that cosmetic surgeons may face greater legal responsibility due to the elective nature of their work and the higher expectations placed on them by patients and society (17). This creates a distinct legal framework for evaluating criminal liability in cosmetic surgery compared to other surgical fields.

Despite the general applicability of criminal liability principles to all medical procedures, cosmetic surgery presents unique legal challenges that distinguish it from therapeutic and reconstructive surgery. The elective nature of cosmetic procedures, combined with the absence of medical necessity, creates a legal environment in which physicians face heightened responsibility and increased exposure to criminal liability. Patients undergoing cosmetic surgery often expect specific aesthetic outcomes, and failure to achieve these outcomes may lead to legal disputes even when physicians have acted in good faith. This situation raises important questions regarding the appropriate standards of care, the role of patient consent, and the extent of physician liability in cosmetic surgery.

The legal system must balance the need to protect patients from medical negligence with the recognition that medical procedures inherently involve risks. In cosmetic surgery, this balance is particularly difficult to achieve because the justification for exposing patients to risk is weaker than in therapeutic contexts. This creates uncertainty regarding the legal standards applicable to cosmetic surgeons and the conditions under which criminal liability should be imposed.

The primary objective of this study is to analyze and explain the differences in criminal liability of physicians in cosmetic surgery compared to other types of surgery.

The secondary objectives include defining criminal liability in medical practice, identifying the legal elements of criminal liability in surgical procedures, examining the legal characteristics of cosmetic surgery, and comparing liability standards between cosmetic and therapeutic surgery.

The main research question guiding this study is:

How does criminal liability of physicians differ in cosmetic surgery compared to other types of surgical procedures?

Legal Foundations of Criminal Liability in Surgical Practice

Concept and Elements of Criminal Liability in Medical Law

Criminal liability in medical law is rooted in the broader principles of criminal jurisprudence, which establish the conditions under which an individual may be held accountable for conduct that violates legally protected interests. At its core, criminal liability requires the existence of three fundamental elements: the legal element, the material element, and the mental element. These components form the analytical framework used to determine whether a physician's conduct constitutes a criminal offense when performing surgical procedures. The legal element refers to the existence of a criminal provision that defines and prohibits certain conduct, ensuring that no individual may be punished without a prior legal basis for liability. This principle, commonly expressed as the legality principle, is central to criminal justice systems and ensures predictability and fairness in the application of criminal sanctions (1). In the context of medical practice, this element requires that criminal liability arise only when a physician's actions fall within the scope of conduct defined as unlawful under criminal statutes governing medical negligence or professional misconduct (2).

The material element of criminal liability involves the actual occurrence of harmful conduct or omission that results in injury, harm, or risk to the patient. In medical contexts, this element may manifest in the form of improper surgical intervention, failure to provide appropriate care, or neglect in monitoring patient conditions. The material element requires a demonstrable link between the physician's conduct and the harm suffered by the patient, thereby establishing that the physician's actions were a factual cause of the injury. Medical law scholars emphasize that surgical procedures inherently involve physical intervention and risk, but criminal liability arises only when the conduct deviates from accepted medical standards and produces unjustified harm (3). This distinction is essential because lawful medical treatment may involve physical harm as an unavoidable consequence, yet remains legally justified when performed appropriately and with proper consent (14). Therefore, the material element in medical criminal liability focuses on whether the harm resulted from improper or unlawful conduct rather than from the inherent risks of medical intervention.

The mental element, also known as fault or mens rea, represents the psychological dimension of criminal liability and refers to the physician's state of mind at the time of the harmful conduct. In medical criminal law, fault most commonly arises in the form of negligence rather than intentional wrongdoing. Negligence occurs when a physician fails to exercise the level of care expected of a reasonably competent medical professional under similar circumstances. Legal doctrine distinguishes between different degrees of fault, including carelessness, recklessness, and gross negligence, each of which carries different legal implications (4). Carelessness refers to a failure to exercise ordinary caution, while recklessness involves conscious disregard of a known risk. Gross negligence represents a severe departure from professional standards and may justify criminal sanctions when it results in serious harm (15). In surgical practice, the mental element may be established when a physician proceeds with a procedure despite inadequate preparation, insufficient training, or awareness of potential risks.

Medical negligence can take several forms, each reflecting a different type of professional fault. One of the most common forms is carelessness, which involves unintentional failure to observe appropriate precautions during

surgical procedures. This may include errors in surgical technique, improper monitoring of patient vital signs, or failure to follow established protocols. Carelessness becomes legally significant when it results in harm that could have been avoided through reasonable professional diligence (6). Recklessness, by contrast, involves conscious disregard for patient safety, such as performing a procedure without necessary equipment or ignoring known medical contraindications. Recklessness reflects a more serious form of fault because the physician is aware of the risk but proceeds regardless, thereby increasing the likelihood of criminal liability (1).

Another important category of negligence involves lack of skill or professional competence. Medical practice requires specialized knowledge and training, and physicians are expected to perform procedures only within their area of expertise. When a physician performs a surgical procedure without adequate training or competence, resulting in harm to the patient, this may constitute criminal negligence. Legal commentators emphasize that professional competence is a fundamental requirement for lawful medical practice and that failure to meet this standard undermines the legal justification for surgical intervention (17). Similarly, violation of professional regulations or medical standards may establish criminal liability when such violations result in harm. Medical regulations are designed to ensure patient safety, and failure to comply with these regulations may constitute evidence of negligence (18). These various forms of negligence collectively illustrate how the mental element of criminal liability operates in medical contexts.

Criminal Liability of Physicians Under Iranian Criminal Law

The criminal liability of physicians in Iran is primarily governed by the Islamic Penal Code, which establishes specific provisions addressing medical negligence and professional misconduct. Articles 495 to 498 of the Islamic Penal Code provide the legal framework for determining physician liability in cases involving harm caused by medical treatment. These provisions recognize that physicians may be held criminally responsible when harm results from negligence, lack of skill, or failure to comply with professional standards. The law reflects the principle that medical professionals, despite their therapeutic role, remain subject to criminal law when their conduct violates legal and professional obligations (19). These provisions ensure that patients are protected from negligent medical conduct while allowing physicians to perform necessary medical interventions within lawful boundaries.

Article 158 of the Islamic Penal Code establishes important exceptions to criminal liability by recognizing that medical procedures may be legally justified under certain conditions. This provision states that medical treatment is not considered criminal when performed with valid patient consent, in accordance with professional standards, and for legitimate medical purposes. This legal framework reflects the broader principle that medical intervention is justified when it serves the patient's interests and complies with accepted standards of care (2). Patient consent plays a critical role in this context because it provides legal authorization for medical intervention that would otherwise constitute unlawful bodily harm. However, consent alone is not sufficient to eliminate criminal liability if the physician fails to comply with professional standards or engages in negligent conduct.

Compliance with medical standards represents another essential condition for exemption from criminal liability. Physicians are required to perform surgical procedures in accordance with accepted scientific and professional practices. Failure to meet these standards may result in criminal liability, even when patient consent has been obtained. Legal scholars emphasize that professional standards serve as the benchmark for evaluating physician conduct and determining whether medical intervention was lawful (11). Legitimate medical purpose also plays an important role in determining liability. Medical interventions must serve a lawful therapeutic or medically justified

objective. Procedures performed without legitimate medical purpose or outside professional competence may be considered unlawful and subject to criminal sanctions (17).

Failure to meet these legal conditions may result in criminal liability when harm occurs. When a physician performs surgery without valid consent, fails to comply with professional standards, or lacks legitimate medical justification, the legal protection normally afforded to medical practice is removed. In such cases, the physician's conduct may be treated as criminal negligence or unlawful bodily harm. This framework reflects the legal system's effort to balance the need to protect patients with the recognition that medical practice inherently involves risk (20). By establishing clear conditions for lawful medical intervention, the law provides guidance for physicians while ensuring accountability for negligent conduct.

Role of Medical Fault in Criminal Liability

Medical fault represents the central basis for criminal liability in surgical practice. Criminal law does not impose liability simply because harm occurs during medical treatment; rather, liability arises when the harm results from professional fault. Professional fault may involve errors in diagnosis, improper surgical technique, or failure to comply with professional standards. Diagnostic errors, for example, may result in inappropriate treatment decisions that expose patients to unnecessary risk. When such errors occur due to negligence rather than unavoidable uncertainty, they may form the basis for criminal liability (21). Improper surgical technique represents another form of professional fault, particularly when physicians fail to adhere to established medical procedures or use inappropriate methods.

Failure to obtain proper consent also constitutes professional fault when it deprives patients of their legal right to make informed decisions about medical treatment. Informed consent is a fundamental requirement of lawful medical practice, and failure to obtain valid consent may render medical intervention unlawful. Legal authorities emphasize that consent must be informed, voluntary, and provided by a competent patient to be legally valid (13). Performing procedures beyond professional competence represents another form of fault that may result in criminal liability. Physicians are expected to recognize the limits of their expertise and avoid performing procedures for which they are not adequately trained (3).

Causation represents a crucial requirement for establishing criminal liability. It must be demonstrated that the physician's fault directly caused the harm suffered by the patient. This requirement ensures that physicians are not held criminally responsible for harm resulting from factors beyond their control. Establishing causation may involve complex medical and legal analysis, particularly when multiple factors contribute to patient injury. Legal doctrine emphasizes that liability arises only when there is a clear causal connection between negligent conduct and harm (15). This principle ensures fairness in the application of criminal sanctions.

Role of Patient Consent in Medical Criminal Liability

Patient consent represents a fundamental legal and ethical requirement for lawful medical treatment. Informed consent refers to the patient's voluntary agreement to undergo medical intervention after receiving adequate information about the risks, benefits, and alternatives associated with the procedure. This concept reflects the ethical principle of patient autonomy, which recognizes the individual's right to control decisions affecting their own body (5). In legal terms, consent provides authorization for medical intervention and protects physicians from criminal liability when procedures are performed lawfully.

For consent to be legally valid, several conditions must be satisfied. The patient must possess legal competence, meaning the capacity to understand the information provided and make informed decisions. Competence ensures that consent is based on rational decision-making rather than coercion or incapacity (12). The patient must also receive adequate information about the procedure, including potential risks and complications. Failure to provide sufficient information may invalidate consent and expose physicians to liability (3). Voluntariness represents another essential requirement, ensuring that consent is given freely without coercion or undue pressure.

Despite its importance, consent does not provide absolute protection from criminal liability. Physicians remain responsible for complying with professional standards and may be held liable for negligence even when consent has been obtained. Legal scholars emphasize that consent cannot justify negligent conduct or unlawful medical practice (22). This limitation reflects the principle that patient consent does not authorize physicians to act incompetently or disregard professional obligations.

Consent plays a particularly critical role in cosmetic surgery due to the elective nature of these procedures. Because cosmetic surgery is not medically necessary, patient consent becomes the primary legal justification for surgical intervention. This increases the physician's responsibility to ensure that consent is fully informed and legally valid. Failure to obtain proper consent in cosmetic surgery may result in criminal liability, particularly when adverse outcomes occur (9). This highlights the central role of consent in defining the legal boundaries of surgical practice.

Legal Nature of Cosmetic Surgery and Its Impact on Criminal Liability

Definition and Characteristics of Cosmetic Surgery

Cosmetic surgery represents a distinct category of medical intervention characterized by its primary objective of improving physical appearance rather than diagnosing, treating, or preventing disease. Unlike therapeutic procedures, which are performed to restore health or preserve life, cosmetic surgeries are elective interventions undertaken at the patient's request for aesthetic enhancement. Legal and medical scholars consistently emphasize that cosmetic surgery is defined by the absence of therapeutic necessity and its focus on subjective improvement in appearance rather than objective medical benefit (16). This fundamental distinction has significant legal implications because it alters the justification for medical intervention and the scope of physician responsibility. In the absence of therapeutic necessity, the legal justification for exposing patients to surgical risk depends more heavily on professional competence, valid consent, and strict adherence to medical standards.

One of the defining characteristics of cosmetic surgery is its elective nature. Elective procedures are not medically required to preserve the patient's life or health but are performed voluntarily based on the patient's personal preferences. This elective character means that patients undergoing cosmetic surgery are typically not suffering from medical conditions that require urgent intervention. As a result, the legal and ethical justification for cosmetic surgery differs substantially from therapeutic interventions, which are performed to address objective medical needs. Legal commentators emphasize that elective procedures impose heightened legal scrutiny because the physician's actions cannot be justified solely on the basis of medical necessity (9). This creates a legal environment in which cosmetic surgeons must demonstrate that their conduct meets the highest standards of professional competence and ethical responsibility.

The absence of therapeutic necessity further distinguishes cosmetic surgery from other forms of medical treatment and increases its legal sensitivity. Therapeutic interventions are generally justified by the need to treat

illness, prevent deterioration, or alleviate suffering. Cosmetic surgery, by contrast, is performed primarily to enhance physical appearance, even when the patient is medically healthy. This lack of medical necessity weakens the legal justification for surgical intervention and places greater emphasis on other legal safeguards, particularly informed consent and professional competence. Legal scholars note that when medical intervention is not necessary for health reasons, the physician's legal responsibility increases because the risks associated with the procedure cannot be justified by therapeutic benefits (11). Consequently, cosmetic surgeons are expected to exercise exceptional caution and ensure that patients fully understand the risks involved.

Another important characteristic of cosmetic surgery is the high level of patient expectation associated with aesthetic outcomes. Unlike therapeutic procedures, where success is measured primarily by medical improvement, cosmetic surgery is evaluated based on subjective perceptions of appearance. Patients often expect specific aesthetic results and may pursue legal action if those expectations are not met. This creates a unique legal challenge because dissatisfaction with cosmetic outcomes may lead to allegations of negligence even when the procedure was performed correctly. Legal commentators emphasize that cosmetic surgeons must carefully manage patient expectations and provide clear information about potential risks and limitations to avoid legal disputes (10). The subjective nature of cosmetic outcomes increases the likelihood of legal claims and contributes to the heightened legal risk associated with cosmetic surgery.

These characteristics collectively increase the legal risk faced by cosmetic surgeons and influence the application of criminal liability. Because cosmetic surgery is elective and lacks therapeutic necessity, physicians must rely on valid consent and strict adherence to professional standards to justify their actions. Failure to meet these requirements may expose physicians to criminal liability when harm occurs. This heightened legal risk reflects the broader principle that medical interventions without therapeutic justification require stronger legal safeguards to protect patient rights and ensure accountability (3).

Legal Nature of Therapeutic and Reconstructive Surgeries

Therapeutic and reconstructive surgeries differ fundamentally from cosmetic procedures in their objectives and legal justification. Therapeutic surgery is performed to treat medical conditions, alleviate symptoms, or prevent disease progression. These procedures are considered medically necessary because they serve a clear health-related purpose and are essential for maintaining or restoring the patient's well-being. Reconstructive surgery, while sometimes involving aesthetic considerations, is primarily intended to restore function or correct deformities resulting from injury, disease, or congenital abnormalities. Examples include reconstructive procedures following trauma, cancer surgery, or congenital deformities. Legal scholars emphasize that therapeutic and reconstructive surgeries are justified by medical necessity and are therefore subject to different legal standards than cosmetic procedures (14).

Medical necessity plays a central role in determining the legality of therapeutic and reconstructive surgeries. When surgical intervention is necessary to protect the patient's health or life, the law recognizes the physician's actions as legally justified, even when risks are involved. This principle reflects the broader doctrine of legal justification, which permits conduct that would otherwise be unlawful when performed for legitimate purposes. In therapeutic contexts, the benefits of medical intervention generally outweigh the risks, providing strong legal justification for surgical procedures (15). This legal justification reduces the likelihood of criminal liability, provided that the physician acts in accordance with professional standards and exercises reasonable care.

The restorative nature of reconstructive surgery also contributes to its legal justification. Reconstructive procedures aim to correct deformities, restore function, or improve quality of life following injury or illness. These procedures are considered medically necessary because they address objective physical or functional impairments. Legal authorities recognize that reconstructive surgery serves a legitimate therapeutic purpose and therefore benefits from stronger legal protection than purely cosmetic procedures (17). This distinction underscores the importance of medical necessity in determining criminal liability.

The presence of therapeutic necessity affects judicial evaluation of physician conduct in surgical cases. Courts are generally more reluctant to impose criminal liability when surgical intervention was necessary to treat medical conditions. Legal scholars emphasize that the necessity of medical intervention provides a strong defense against allegations of criminal negligence, provided that the physician acted competently and in accordance with accepted medical practices (2). This reflects the broader legal principle that conduct performed for legitimate and necessary purposes is less likely to be considered criminal.

Increased Standard of Care in Cosmetic Surgery

Cosmetic surgery imposes a heightened standard of care on physicians due to its elective nature and lack of medical necessity. The standard of care represents the level of competence and diligence expected of medical professionals under similar circumstances. In cosmetic surgery, this standard is particularly strict because the legal justification for surgical intervention depends primarily on professional competence and valid consent rather than therapeutic necessity. Legal commentators emphasize that cosmetic surgeons must exercise greater caution and adhere to stricter professional standards to avoid criminal liability (12).

The heightened duty of care in cosmetic surgery reflects the increased responsibility associated with performing elective procedures. Physicians must carefully evaluate patient suitability, assess potential risks, and ensure that procedures are performed safely and competently. Failure to fulfill these obligations may constitute professional negligence and result in criminal liability. Legal scholars note that cosmetic surgeons are expected to meet higher standards of professional conduct because their procedures are not medically necessary and expose patients to avoidable risks (8). This increased duty of care reflects the legal system's effort to protect patients from unnecessary harm.

Greater responsibility in patient evaluation represents another important aspect of the heightened standard of care in cosmetic surgery. Physicians must assess not only the patient's physical condition but also psychological suitability for cosmetic procedures. Failure to identify contraindications or psychological risk factors may increase the likelihood of adverse outcomes and legal liability. Legal authorities emphasize that cosmetic surgeons must exercise careful judgment in determining whether surgery is appropriate for each patient (6). This requirement reflects the broader principle that physicians must act in the best interests of their patients.

The heightened standard of care in cosmetic surgery also increases the physician's exposure to criminal liability. Because cosmetic procedures are elective, courts may apply stricter scrutiny when evaluating physician conduct. Legal scholars emphasize that cosmetic surgeons must demonstrate exceptional competence and adherence to professional standards to avoid liability (21). This heightened scrutiny reflects the legal system's recognition of the unique risks associated with cosmetic surgery.

Role of Informed Consent in Cosmetic Surgery

Informed consent plays a decisive role in determining criminal liability in cosmetic surgery due to the elective nature of these procedures. Informed consent represents the patient's voluntary agreement to undergo medical intervention after receiving adequate information about risks, benefits, and alternatives. This principle reflects the ethical doctrine of patient autonomy, which recognizes the individual's right to make decisions about their own body (5). In cosmetic surgery, informed consent serves as the primary legal justification for surgical intervention because medical necessity is absent.

The voluntary nature of cosmetic surgery makes informed consent particularly important in establishing the legality of the procedure. Patients undergoing cosmetic surgery must fully understand the risks involved and voluntarily accept those risks. Failure to provide adequate information may invalidate consent and expose physicians to criminal liability. Legal scholars emphasize that cosmetic surgeons must provide detailed explanations of potential risks and complications to ensure valid consent (13). This requirement reflects the heightened legal sensitivity associated with elective procedures.

Defective consent may have serious legal consequences for cosmetic surgeons. If consent is obtained through inadequate disclosure, coercion, or misrepresentation, the procedure may be considered unlawful. Legal authorities emphasize that invalid consent removes the legal protection normally afforded to medical practice and exposes physicians to criminal liability (3). This underscores the central role of informed consent in defining the legality of cosmetic surgery.

Criminal Liability for Cosmetic Surgery Failures

Failures in cosmetic surgery may result in serious harm, including disfigurement, permanent injury, psychological harm, and death. These outcomes may trigger criminal liability when they result from professional negligence or failure to comply with legal requirements. Disfigurement represents one of the most common adverse outcomes and may significantly affect the patient's quality of life. Legal commentators emphasize that cosmetic surgeons may be held criminally responsible when disfigurement results from negligent conduct (9).

Permanent injury represents another serious consequence that may lead to criminal liability. When cosmetic surgery results in irreversible harm due to professional fault, physicians may face criminal sanctions. Psychological harm may also result from cosmetic surgery failures, particularly when patients experience emotional distress or dissatisfaction with results. Legal authorities recognize that cosmetic surgery failures may have profound psychological consequences and may justify legal action (10).

Criminal liability for cosmetic surgery failures may result in various legal consequences, including payment of compensation, imprisonment, and professional sanctions. Compensation serves as a mechanism for addressing harm caused by medical negligence. Imprisonment may be imposed in cases involving gross negligence or serious harm. Professional sanctions, including suspension or revocation of medical licenses, may also be imposed to protect public safety. These legal consequences reflect the seriousness of criminal liability in cosmetic surgery and underscore the importance of professional competence and adherence to legal standards (20).

Comparative Analysis of Criminal Liability in Cosmetic Surgery vs Other Surgeries

The comparative analysis of criminal liability in cosmetic surgery and other forms of surgical intervention reveals significant legal distinctions rooted in the nature, purpose, and justification of medical procedures. Although criminal liability principles apply universally to all physicians, the legal evaluation of conduct differs substantially depending on whether the procedure was medically necessary or elective. This distinction affects multiple dimensions of criminal liability, including legal justification, standard of care, the role of consent, judicial evaluation, and the allocation of legal risk. Understanding these differences is essential for clarifying the legal position of cosmetic surgeons and explaining why cosmetic procedures are subject to stricter scrutiny within criminal law.

Differences in Medical Necessity

Medical necessity represents one of the most fundamental factors influencing criminal liability in surgical practice. Therapeutic surgery is typically performed to treat illness, alleviate suffering, prevent deterioration, or preserve the patient's life. In such cases, surgical intervention is not merely optional but represents an essential component of medical treatment. Legal doctrine recognizes that physicians are justified in performing invasive procedures when such procedures are necessary to protect the patient's health or life, even when risks are involved. This principle reflects the broader concept of legal justification, which permits conduct that would otherwise constitute bodily harm when performed for legitimate medical purposes (2). The necessity of medical intervention therefore provides a strong legal foundation that protects physicians from criminal liability, provided they act within professional standards.

Therapeutic surgery often involves urgent or emergency situations in which immediate intervention is required to prevent serious harm or death. In these contexts, physicians may be required to act quickly based on available medical information, and the law recognizes the necessity of such actions. Legal scholars emphasize that the urgency and necessity of therapeutic intervention reduce the likelihood of criminal liability, because the physician's actions are motivated by the legitimate objective of preserving health or life (3). This recognition reflects the legal system's effort to support physicians in fulfilling their professional duties without fear of criminal prosecution when acting appropriately.

In contrast, cosmetic surgery is characterized by its elective and non-essential nature. Cosmetic procedures are performed primarily to improve appearance rather than to address medical conditions or preserve health. Because these procedures are not medically necessary, the legal justification for exposing patients to surgical risk is inherently weaker. Legal commentators emphasize that the absence of therapeutic necessity increases the legal sensitivity of cosmetic surgery and subjects physicians to greater scrutiny (16). This distinction significantly affects the legal evaluation of physician conduct, as cosmetic surgeons cannot rely on medical necessity as a primary defense against criminal liability.

The legal consequences of this distinction are profound. In therapeutic surgery, the necessity of treatment provides strong legal justification that may mitigate liability even when adverse outcomes occur. However, in cosmetic surgery, the absence of necessity means that physicians must rely primarily on professional competence and valid consent to justify their actions. Legal scholars emphasize that when medical necessity is absent, the legal threshold for acceptable conduct becomes higher, and physicians must demonstrate strict compliance with

professional standards to avoid criminal liability (12). This difference illustrates why cosmetic surgery is considered legally more sensitive than therapeutic surgery.

Differences in Legal Justification

Legal justification represents a central concept in criminal law and plays a critical role in determining physician liability. In therapeutic surgery, medical necessity provides a clear legal justification for surgical intervention. This justification arises from the physician's duty to protect the patient's health and fulfill professional obligations. Criminal law recognizes that actions performed to treat medical conditions serve a legitimate and socially beneficial purpose, even when they involve risks or unintended harm. Legal authorities emphasize that medical necessity transforms conduct that would otherwise be considered harmful into legally justified treatment (15). This principle provides significant legal protection for physicians performing therapeutic procedures.

In cosmetic surgery, however, the absence of therapeutic necessity weakens the legal foundation for surgical intervention. Cosmetic procedures are performed voluntarily at the patient's request and do not address medical conditions that require treatment. As a result, the legal justification for cosmetic surgery depends primarily on patient consent and physician competence rather than medical necessity. Legal commentators emphasize that cosmetic surgery lacks the inherent legal protection afforded to therapeutic interventions and therefore requires stricter adherence to legal and professional standards (9). This creates a more demanding legal environment for cosmetic surgeons.

The legal justification for cosmetic surgery must therefore be established through careful compliance with procedural and professional requirements. Physicians must obtain valid informed consent, ensure patient suitability, and perform procedures in accordance with accepted medical standards. Failure to meet these conditions may result in the loss of legal protection and exposure to criminal liability. Legal scholars emphasize that cosmetic surgery is justified only when performed with full patient awareness and strict adherence to professional competence (11). This highlights the importance of professional responsibility in establishing legal justification.

The distinction in legal justification between therapeutic and cosmetic surgery reflects broader principles of criminal law. Conduct performed out of necessity is more likely to be considered justified, while elective conduct requires stronger legal safeguards. Legal doctrine recognizes that the absence of necessity increases the physician's responsibility to ensure the legality of medical intervention (1). This principle explains why cosmetic surgery is subject to stricter legal scrutiny and greater risk of criminal liability.

Differences in Standard of Care

The standard of care represents another critical factor distinguishing criminal liability in cosmetic surgery from other surgical procedures. The standard of care refers to the level of competence, diligence, and professionalism expected of physicians when performing medical interventions. In therapeutic surgery, physicians are expected to act in accordance with accepted medical practices, taking into account the patient's condition and the urgency of treatment. The law recognizes that therapeutic procedures may involve unavoidable risks and evaluates physician conduct based on whether it meets reasonable professional standards (8).

In cosmetic surgery, however, the standard of care is significantly higher due to the elective nature of the procedure. Because cosmetic surgery is not medically necessary, physicians must exercise exceptional caution and ensure that all aspects of the procedure meet the highest professional standards. Legal commentators

emphasize that cosmetic surgeons are held to stricter standards because they voluntarily expose patients to surgical risks without therapeutic justification (10). This heightened standard reflects the legal system's effort to protect patients from unnecessary harm.

Judicial interpretation of physician conduct also reflects this distinction. Courts are more likely to impose criminal liability when cosmetic surgery results in harm, particularly when professional standards are not strictly followed. Legal scholars emphasize that cosmetic surgeons must demonstrate exceptional competence and adherence to professional standards to avoid liability (21). This stricter evaluation reflects the absence of medical necessity and the increased responsibility associated with elective procedures.

The higher standard of care in cosmetic surgery also increases physician exposure to criminal liability. Because cosmetic procedures are elective, physicians cannot rely on necessity as a defense and must demonstrate that their conduct was fully consistent with professional standards. Legal authorities emphasize that failure to meet these standards may result in criminal sanctions, including compensation and imprisonment (17). This highlights the increased legal risk faced by cosmetic surgeons.

Differences in Role of Consent

Patient consent plays a critical role in both therapeutic and cosmetic surgery, but its legal significance differs substantially between these contexts. In therapeutic surgery, consent serves primarily as a procedural safeguard that respects patient autonomy. While consent is important, the medical necessity of treatment provides independent legal justification for intervention. Legal scholars emphasize that therapeutic necessity may justify medical intervention even when consent is limited, particularly in emergency situations (14). This reflects the priority given to preserving health and life.

In cosmetic surgery, consent plays a much more central role in establishing the legality of the procedure. Because cosmetic surgery is elective and not medically necessary, patient consent represents the primary legal basis for surgical intervention. Legal commentators emphasize that cosmetic surgeons must obtain fully informed consent to justify exposing patients to surgical risks (13). This requirement reflects the absence of therapeutic necessity and the importance of respecting patient autonomy.

However, consent does not eliminate criminal liability when negligence occurs. Physicians remain responsible for complying with professional standards and may be held criminally liable for negligent conduct even when valid consent has been obtained. Legal doctrine emphasizes that consent cannot justify negligent or incompetent medical practice (22). This limitation ensures that patient consent does not undermine the legal obligation to maintain professional competence.

Differences in Burden of Proof and Judicial Evaluation

Judicial evaluation of physician conduct differs significantly between cosmetic and therapeutic surgery due to differences in legal justification and necessity. Courts typically apply stricter scrutiny to cosmetic surgery cases because the procedures are elective and involve avoidable risks. Legal scholars emphasize that cosmetic surgeons must demonstrate strict compliance with professional standards to avoid liability (7). This heightened scrutiny reflects the legal system's recognition of the unique risks associated with cosmetic surgery.

The burden of proof may also be influenced by the nature of the procedure. In cosmetic surgery cases, courts may closely examine physician conduct to determine whether proper consent was obtained and professional

standards were followed. Legal commentators emphasize that cosmetic surgeons must provide clear evidence of compliance with legal and professional requirements (3). This stricter evaluation increases the likelihood of criminal liability.

Differences in Risk Allocation

The allocation of legal risk differs significantly between cosmetic and therapeutic surgery. In therapeutic surgery, risk is justified by medical necessity and is therefore shared between the physician and the patient. Legal doctrine recognizes that therapeutic interventions involve unavoidable risks and provides legal protection for physicians acting appropriately (20). This reduces physician exposure to criminal liability.

In cosmetic surgery, however, the absence of medical necessity shifts greater legal responsibility onto the physician. Because cosmetic procedures are elective, physicians bear greater responsibility for ensuring patient safety and legal compliance. Legal scholars emphasize that cosmetic surgeons must exercise exceptional caution and adhere strictly to professional standards to avoid criminal liability (6). This reflects the broader principle that elective procedures require greater legal safeguards to protect patient rights.

This comparative analysis demonstrates that cosmetic surgery involves significantly greater criminal liability exposure than therapeutic surgery due to differences in medical necessity, legal justification, standard of care, consent, judicial evaluation, and risk allocation.

Conclusion

The analysis presented in this study demonstrates that criminal liability in surgical practice is not applied uniformly across all types of medical procedures but is instead significantly influenced by the legal nature, purpose, and necessity of the intervention. While criminal law principles governing negligence, fault, and causation apply broadly to all physicians, the specific context in which surgical intervention occurs plays a decisive role in determining the extent of criminal responsibility. The comparison between cosmetic surgery and therapeutic or reconstructive surgery reveals fundamental legal differences that directly affect how physician conduct is evaluated and how liability is assigned.

One of the most important findings of this study is that medical necessity serves as a central legal factor in determining criminal liability. Therapeutic and reconstructive surgeries are generally performed to preserve health, restore bodily function, or prevent deterioration of the patient's condition. Because these procedures serve a clear medical purpose, the law recognizes their necessity and provides strong legal justification for surgical intervention. This justification significantly reduces the physician's exposure to criminal liability, provided that the procedure is performed in accordance with professional standards. In contrast, cosmetic surgery is characterized by its elective nature and lack of therapeutic necessity. Cosmetic procedures are performed primarily to improve appearance rather than to treat disease or protect health, which fundamentally alters the legal justification for surgical intervention. The absence of medical necessity increases the physician's legal responsibility because the risks associated with the procedure cannot be justified by therapeutic benefit.

Another critical conclusion of this study is that cosmetic surgery imposes a higher standard of professional care on physicians compared to therapeutic surgery. Because cosmetic procedures are elective and involve avoidable risks, physicians must exercise exceptional caution in patient selection, preoperative evaluation, and surgical performance. The law expects cosmetic surgeons to demonstrate a higher level of professional competence,

precision, and diligence in order to ensure patient safety. Failure to meet this heightened standard of care may result in criminal liability, particularly when harm occurs as a result of negligence, lack of skill, or improper conduct. This stricter standard reflects the legal system's recognition that elective procedures require stronger safeguards to protect patients from unnecessary harm.

The role of patient consent also differs significantly between cosmetic and therapeutic surgery. While informed consent is a fundamental requirement in all medical procedures, its legal importance is especially pronounced in cosmetic surgery. In therapeutic contexts, medical necessity provides independent justification for surgical intervention, and consent functions primarily as a procedural safeguard. However, in cosmetic surgery, consent serves as a primary legal basis for performing the procedure, since medical necessity is absent. Cosmetic surgeons must therefore ensure that consent is fully informed, voluntary, and based on a clear understanding of potential risks and outcomes. Failure to obtain proper consent may render the procedure unlawful and expose the physician to criminal liability. At the same time, this study confirms that consent does not provide absolute protection against criminal responsibility. Physicians remain legally obligated to comply with professional standards, and negligent conduct cannot be justified solely on the basis of patient consent.

The comparative analysis further demonstrates that judicial evaluation of physician conduct is more stringent in cosmetic surgery cases than in therapeutic surgery cases. Courts are more likely to closely scrutinize cosmetic procedures because they involve voluntary exposure to surgical risks without medical necessity. This heightened scrutiny reflects the legal principle that elective procedures require stronger justification and stricter compliance with professional standards. When adverse outcomes occur in cosmetic surgery, courts are more likely to examine whether the physician exercised appropriate care, obtained valid consent, and acted within the limits of professional competence. This stricter judicial evaluation increases the likelihood of criminal liability for cosmetic surgeons compared to physicians performing medically necessary procedures.

Risk allocation represents another important distinction between cosmetic and therapeutic surgery. In therapeutic contexts, the risks associated with surgical intervention are considered an unavoidable aspect of medical treatment, and legal responsibility is shared between the physician and the patient within the framework of medical necessity. However, in cosmetic surgery, the elective nature of the procedure shifts greater legal responsibility onto the physician. Because cosmetic procedures are not medically required, physicians bear a greater burden to ensure patient safety and prevent harm. This increased allocation of risk to the physician reflects the legal system's effort to protect patients from unnecessary medical intervention and to ensure accountability for professional conduct.

The findings of this study also highlight the broader implications of criminal liability for medical practice. Criminal liability serves an essential role in maintaining professional standards, protecting patient safety, and promoting accountability within the medical profession. By imposing legal consequences for negligent conduct, criminal law reinforces the importance of professional competence and ethical responsibility. At the same time, the law recognizes the inherent risks associated with medical practice and seeks to avoid imposing liability for unavoidable outcomes when physicians act appropriately. This balance between accountability and professional autonomy is essential for ensuring both patient protection and the effective functioning of healthcare systems.

The analysis presented in this study confirms that cosmetic surgery occupies a unique position within medical law due to its elective nature, absence of medical necessity, and heightened legal sensitivity. These characteristics create a distinct legal framework in which cosmetic surgeons face greater exposure to criminal liability compared to physicians performing therapeutic or reconstructive procedures. This increased liability reflects the higher

expectations placed on cosmetic surgeons and the need for stronger legal safeguards in elective medical interventions.

Ultimately, this study demonstrates that criminal liability in cosmetic surgery is shaped by a combination of legal, ethical, and professional factors that distinguish it from other forms of surgical practice. The absence of medical necessity, the heightened standard of care, the central role of informed consent, stricter judicial scrutiny, and increased allocation of legal risk all contribute to the greater criminal liability exposure faced by cosmetic surgeons. Understanding these differences is essential for clarifying the legal responsibilities of physicians and ensuring that cosmetic surgery is performed in a manner that respects patient rights and complies with legal and professional standards.

In conclusion, cosmetic surgery represents a legally sensitive area of medical practice in which physicians must exercise exceptional care, adhere strictly to professional standards, and ensure full compliance with legal requirements. The comparative analysis conducted in this study highlights the importance of medical necessity, professional competence, and informed consent in determining criminal liability and underscores the need for clear legal and professional guidelines to govern cosmetic surgical practice.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

References

1. Ashworth A. Principles of Criminal Law. Oxford: Oxford University Press; 2013.
2. Ardabili MA. General Criminal Law (Vol. 1). Tehran: Mizan Publishing; 2014.
3. Jackson E. Medical Law: Text, Cases, and Materials. Oxford: Oxford University Press; 2019.
4. Ormerod D, Laird K. Smith and Hogan's Criminal Law. Oxford: Oxford University Press; 2018.

5. World Medical A. Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects. Geneva: World Medical Association; 2013.
6. Abbasi M. Medical Negligence and Legal Responsibility. *Iranian Journal of Medical Law*. 2012;6(21):45-72.
7. Studdert DM. Medical Malpractice Law and Patient Safety. *New England Journal of Medicine*. 2006;354(19):2024-33.
8. Brazier M, Cave E. *Medicine, Patients and the Law*. Manchester: Manchester University Press; 2016.
9. Gillette R. Cosmetic Surgery and Legal Responsibility. *Journal of Law and Medicine*. 2011;18(4):745-62.
10. Faunce T. Cosmetic Surgery and Medical Law. *Medical Journal of Australia*. 2007;187(7):404-6.
11. Hosseini Tabar M, Karami A. Legal Analysis of Cosmetic Surgery in Iran. *Journal of Health Law*. 2016;10(1):25-49.
12. Montgomery J. *Health Care Law*. Oxford: Oxford University Press; 2017.
13. McLean S. *Autonomy, Consent and the Law*. London: Routledge; 2013.
14. Kennedy I, Grubb A. *Medical Law: Text and Materials*. London: Butterworths; 2000.
15. Clarkson CMV, Keating H. *Criminal Law: Text and Materials*. London: Sweet and Maxwell; 2010.
16. Parsania H. Legal Nature of Cosmetic Surgery. *Medical Law Quarterly*. 2006;3(2):55-75.
17. Mirzaei M. *Medical Criminal Liability in Iranian Law*. Tehran: Majd Publishing; 2007.
18. Iranian Medical C. *Medical Professional Regulations*. Tehran: Iranian Medical Council; 2007.
19. Zeraat A. *General Criminal Law*. Tehran: Tehran University Press; 2000.
20. Taheri H. *Civil Liability*. Tehran: SAMT Publishing; 2005.
21. Abbasian H. Criminal Liability of Physicians in Iranian Law. *Journal of Criminal Law Studies*. 2022;14(2):45-68.
22. Goldoozian I. *General Criminal Law*. Tehran: University of Tehran Press; 1993.