

# The Legal Regulation of Cosmetic Surgery: Medical Liability Limits Under UAE Legislation in the Light of Islamic Law

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## Abstract

This study examines the legal regulation of cosmetic surgery in the United Arab Emirates (UAE), focusing on the scope of the cosmetic surgeon's liability under UAE legislation and Islamic Sharia principles. The research addresses the legal ambiguity surrounding the classification of cosmetic procedures, particularly enhancement surgeries that are not intended for medical treatment, and the resulting uncertainty regarding the nature of the surgeon's legal obligation. The study aims to analyze the legal nature of cosmetic surgery, distinguish it from other medical interventions, and determine whether the cosmetic surgeon is bound by an obligation of due care or an obligation to achieve a specific result. It also examines the legal foundations of medical liability under Federal Decree-Law No. (4) of 2016 concerning Medical Liability, while assessing the role of the UAE judiciary in interpreting legislative provisions and filling regulatory gaps. Using a descriptive-analytical and comparative methodology, the study analyzes statutory texts, judicial decisions, and classical and contemporary Islamic jurisprudential opinions. The findings demonstrate that UAE courts have played an influential role in developing rules of medical liability related to cosmetic surgery, in some cases imposing stricter standards on surgeons to enhance patient protection. The study also highlights points of convergence and divergence between UAE law and Islamic jurisprudence regarding the permissibility of enhancement cosmetic procedures and the extent of liability and compensation. The study concludes by emphasizing the need for clearer and more specialized legislative provisions that reflect the distinctive nature of cosmetic surgery, ensure balanced protection of patients' rights, and remain consistent with the objectives of Islamic Sharia.

**Keywords:** Cosmetic Surgery, Medical Liability, UAE Law, Islamic Jurisprudence, Due Care Obligation, Judicial Interpretation

## Introduction

Cosmetic surgery has experienced remarkable growth and widespread proliferation over recent decades, largely as a result of rapid medical and technological advancements, coupled with profound transformations in societal perceptions of physical appearance and bodily aesthetics. No longer confined to reconstructive or therapeutic purposes aimed at restoring normal bodily functions, cosmetic surgery has increasingly expanded into enhancement procedures sought primarily to improve appearance in the absence of medical necessity. This transformation has generated complex legal, ethical, and religious questions, particularly concerning the nature and extent of medical liability arising from such elective interventions.

The central complexity of cosmetic surgery lies in its elective character and its focus on achieving a desired aesthetic outcome rather than treating illness or preserving life. This distinctive feature raises a fundamental legal dilemma regarding the nature of the cosmetic surgeon's obligation: whether it should be classified as an obligation of due care, consistent with traditional medical practice, or as an obligation to achieve a specific result agreed upon with the patient. Legal doctrine and judicial practice have long been divided on this issue, resulting in inconsistent standards of liability, especially in cases where the anticipated aesthetic outcome is not realized, despite the absence of clear medical error (Al-Qaidi, 2024).

Within the United Arab Emirates, medical liability is primarily regulated by Federal Decree-Law No. (4) of 2016 on Medical Liability, which sets out general rules governing professional duties, medical error, and civil and criminal accountability. However, the legislation does not establish a specialized or comprehensive regulatory regime tailored to the unique characteristics of cosmetic surgery. This legislative gap has necessitated an expanded judicial role in defining the scope of liability, most notably reflected in the jurisprudence of the Federal Supreme Court. In its landmark 2025 judgment, the Court articulated a new judicial principle by adopting, in certain circumstances, a stricter approach to cosmetic surgeons' liability, treating their obligation as one of achieving a result rather than merely exercising due care (Federal Supreme Court, 2025). This judicial shift has significant implications for both patient protection and professional medical practice.

Parallel to positive law, Islamic Sharia has addressed cosmetic surgery within a normative framework grounded in the objectives of Sharia (*maqāsid al-sharī'a*), particularly the preservation of life, the prevention of harm, and the prohibition of unjustified alteration of God's creation. Islamic jurisprudence differentiates between corrective cosmetic procedures intended to remove defects or alleviate harm which are generally permissible and enhancement procedures undertaken solely for aesthetic improvement, which remain subject to strict conditions and scholarly debate (Shubayr, 2012; Khalaf, 2023). Sharia jurisprudence further elaborates principles of medical liability (*ḍamān*), distinguishing between permissible medical practice, excusable error, and unlawful transgression.

Despite the growing body of literature on medical liability and cosmetic surgery, existing studies tend to examine either the positive legal framework or the Sharia perspective in isolation, without offering an integrated analysis that reflects the UAE's dual normative system. Moreover, limited scholarly attention has been given to the recent judicial developments that have reshaped the contours of cosmetic surgeons' liability in the UAE. This reveals a clear research gap concerning the extent to which current legislation and judicial

interpretation adequately balance patient protection with the need to avoid imposing disproportionate liability on physicians in elective cosmetic procedures.

Accordingly, this study seeks to address this gap by examining the legal regime governing cosmetic surgery in the UAE through an analytical and comparative approach that integrates statutory provisions, judicial practice, and Islamic Sharia principles. The significance of this research lies in its potential to contribute to doctrinal clarity, inform legislative and judicial development, and provide practical guidance for medical practitioners and legal professionals. By clarifying the boundaries of liability and the nature of professional obligations in cosmetic surgery, the study aims to enhance legal certainty and promote a balanced and ethically grounded regulatory framework.

### **The Concept of Cosmetic Surgery and its Distinction from other Medical Practices**

Cosmetic surgery is generally defined as a set of medical or surgical interventions aimed at improving or altering the appearance of a part of the human body, whether for the purpose of correcting a congenital or acquired defect, or for enhancing physical appearance in the absence of a direct therapeutic necessity. Scientific and medical advancements have contributed to the expansion of the concept of cosmetic surgery beyond its traditional therapeutic scope to include purely enhancement procedures. This evolution has given rise to a distinctive legal status for cosmetic surgery compared to other medical specialties (Al-Wreikat et al., 2025).

Legal doctrine distinguishes between therapeutic cosmetic surgery, which is performed with the aim of removing physical or psychological harm resulting from deformity or injury, and enhancement cosmetic surgery, which is undertaken solely to improve physical appearance in response to the patient's personal desire. This distinction has significant legal implications for determining the nature of the physician's obligation. Therapeutic cosmetic surgery is generally treated in the same manner as conventional medical practice, whereas enhancement cosmetic surgery is regarded as a form of medical intervention with a special legal character (Al-Qaidi, 2024).

Under UAE legislation, Federal Decree-Law No. (4) of 2016 concerning Medical Liability does not provide a specific definition of cosmetic surgery. Nevertheless, cosmetic procedures are subject to the general rules of medical liability as medical interventions that require compliance with recognized scientific and professional standards. The absence of a specialized regulatory framework governing enhancement cosmetic surgery has, however, left considerable room for judicial discretion in characterizing the legal nature of these procedures and distinguishing them from other medical practices (Federal Decree-Law No. 4 of 2016).

This distinction is of substantial practical importance, as it directly affects the basis of civil liability, particularly in cases where the expected aesthetic outcome of a cosmetic procedure is not achieved. While physicians in ordinary medical practice are generally bound by an obligation of due care, cosmetic surgeons—especially in enhancement procedures—may be subject to a stricter obligation. This approach has been affirmed by recent UAE judicial rulings, which have recognized that the particular nature of cosmetic surgery justifies heightened

liability standards in order to provide greater protection for patients (Federal Supreme Court, 2025).

It should also be noted that the cosmetic medical contract differs from all named contracts under civil law, due to its unique characteristic of involving direct interference with the human body, which raises heightened considerations of consent, risk, and personal integrity.

### *The Sharia Basis of Cosmetic Surgery and the Conditions of its Permissibility in Islamic Jurisprudence*

Islamic jurisprudence has addressed cosmetic surgery from a purposive (maqāṣid-based) perspective that seeks to promote human welfare and prevent harm. Jurists have relied on the foundational principles of preserving life and removing harm when assessing the permissibility of such interventions. There is a scholarly consensus regarding the permissibility of therapeutic cosmetic surgery intended to remove a physical or psychological defect, as such procedures fall within the scope of legitimate medical treatment sanctioned by Sharia (Shubayr, 2012).

Enhancement cosmetic surgery, however, has been a subject of juristic disagreement. The majority of scholars consider it impermissible when it aims solely at altering natural physical features without the presence of a recognized defect or harm, based on the prohibition against altering God's creation without a valid Sharia justification. Nevertheless, some jurists have permitted such procedures under strict conditions, including the absence of proven harm, the lack of deceptive or fraudulent motives, and conformity with the objectives of Islamic law (Khalaf, 2023).

Among the most significant Sharia conditions governing cosmetic surgery is the requirement of valid consent. Islamic jurisprudence emphasizes that the patient must be fully informed of the nature of the procedure and its potential consequences, a requirement that closely corresponds to the modern legal concept of "informed consent" in positive law. Islamic jurisprudence also affirms the physician's liability in cases of transgression or negligence. If harm results from medical error or professional misconduct, liability and compensation become obligatory. Conversely, if the procedure is conducted in accordance with professional standards and with valid consent, the physician bears no liability (Shubayr, 2012).

A clear convergence can be observed between these Sharia-based principles and the provisions of UAE medical liability law, particularly with respect to adherence to professional standards and the requirement of patient consent prior to medical intervention. However, Islamic Sharia introduces an additional ethical and purposive dimension that places substantive limitations on the permissibility of certain enhancement cosmetic procedures. This dimension opens the door to a rich comparative analysis between the Sharia foundations and the positive legal regulation of cosmetic surgery in the United Arab Emirates (Federal Decree-Law No. 4 of 2016; Khalaf, 2023).

### *The Legal Framework Governing Cosmetic Surgery Under UAE Legislation*

The regulation of cosmetic surgery in the United Arab Emirates is generally subject to the provisions of Federal Decree-Law No. (4) of 2016 concerning Medical Liability, which

constitutes the primary legislative framework governing the practice of medical professions and determining the liability of healthcare practitioners. The law applies to all medical acts without exception, including cosmetic procedures whether therapeutic or enhancement-oriented inasmuch as they constitute medical interventions that affect the integrity of the human body and require compliance with established professional and scientific standards (Federal Decree-Law No. 4 of 2016).

The law imposes a set of fundamental obligations on physicians, including cosmetic surgeons, most notably the duty to exercise due care, adherence to recognized medical rules and professional standards, and the requirement to obtain the patient's informed consent prior to any medical intervention. A breach of these obligations gives rise to medical liability where a medical error is established, damage has occurred, and a causal link exists between the error and the harm. These obligations acquire particular significance in the field of cosmetic surgery due to its sensitive nature and its close connection to patient expectations (Elshama, 2024).

Despite the inclusion of cosmetic surgery within the scope of the Medical Liability Law, the legislator did not introduce a detailed or specialized regulatory regime for such procedures, nor did the law expressly distinguish between therapeutic and enhancement cosmetic surgery. This legislative omission has prompted both the judiciary and legal doctrine to characterize cosmetic procedures based on their nature and objectives. Several scholars have noted that this relative legislative gap may lead to inconsistencies in practical application, particularly with regard to determining the nature of the cosmetic surgeon's obligation and the limits of liability (Al-Qaidi, 2024).

The UAE judiciary has played a pivotal role in complementing the legal framework governing cosmetic surgery. In a recent ruling, the Federal Supreme Court established a judicial principle according to which cosmetic procedures especially enhancement surgeries may impose on the surgeon an obligation exceeding the mere exercise of due care, potentially extending, in certain cases, to an obligation to achieve the agreed result. This judicial trend represents a significant development in the regulation of cosmetic surgery and reflects the courts' efforts to strike a balance between patient protection and the avoidance of excessive liability imposed on physicians (Federal Supreme Court, 2025).

#### *The Nature of the Cosmetic Surgeon's Obligation: Due Care Versus Achieving a Result*

Determining the nature of the cosmetic surgeon's obligation is one of the most controversial issues in legal doctrine and judicial practice, owing to the distinctive characteristics of cosmetic surgery compared to conventional medical activities. The general principle in medical liability is that a physician's obligation is one of due care, meaning that the physician is not liable merely because the patient fails to recover or the desired outcome is not achieved, provided that the physician has exercised the requisite level of care in accordance with established scientific and professional standards. However, this principle encounters clear exceptions in the field of cosmetic surgery, particularly in purely enhancement procedures (Al-Wreikat et al., 2025).

The argument in favor of imposing a stricter obligation on cosmetic surgeons is grounded in the nature of such procedures, as patients often consent to cosmetic surgery based on the

expectation of achieving a specific aesthetic outcome, whether expressly or implicitly agreed upon prior to the operation. A segment of legal scholarship maintains that the surgeon's obligation in such cases is not limited to exercising due care but may rise to the level of an obligation to achieve a result, given that the procedure is not intended to treat a disease but rather to improve a specific physical appearance. Consequently, the anticipated result becomes a central element of the patient's consent and satisfaction (Al-Qaidi, 2024).

Although Federal Decree-Law No. (4) of 2016 does not explicitly define the nature of the cosmetic surgeon's obligation, its general provisions require healthcare practitioners to adhere to professional standards and obtain informed consent. Nevertheless, UAE courts have, in several recent judgments, distinguished between therapeutic surgery and enhancement cosmetic surgery, holding that the latter may impose a stricter obligation on the physician, particularly where the patient's consent is demonstrably based on the expectation of a specific aesthetic outcome (Federal Decree-Law No. 4 of 2016).

This judicial approach was reinforced by the Federal Supreme Court in its 2025 ruling, which held that a cosmetic surgeon may be held civilly liable for failure to achieve the agreed result even in the absence of a traditional technical medical error, provided that the procedure was enhancement-oriented and that the result formed the basis of a legitimate expectation on the part of the patient. This judgment represents a significant judicial development, as it shifts the burden of proof in certain cases to the physician and consolidates the principle of patient protection as the weaker party in the medical contractual relationship (Federal Supreme Court, 2025).

At the same time, recognizing an obligation to achieve a result does not imply the imposition of absolute liability on cosmetic surgeons. Such an obligation remains limited by what is medically reasonable and feasible, as well as by unforeseen complications or factors beyond the physician's control. Moreover, the existence of valid informed consent and the physician's fulfillment of the duty to disclose potential risks remain essential elements in assessing liability. Accordingly, the legal characterization of the cosmetic surgeon's obligation remains relative and subject to judicial discretion based on the circumstances of each case, taking into account the nature of the procedure, the prior agreement, and the physician's professional conduct (Elshama, 2024).

#### *The Elements of Civil Liability of the Cosmetic Surgeon Under UAE Law*

Civil liability of the cosmetic surgeon under UAE law, whether contractual or tortious in nature, is established upon the fulfillment of three essential elements: fault, damage, and causation. These elements are derived from the general rules of civil liability and the provisions of Federal Decree-Law No. (4) of 2016 concerning Medical Liability. Fault constitutes the core element in holding the cosmetic surgeon accountable and arises when the physician breaches professional or legal duties, whether through violation of established medical standards, negligence, lack of due caution, or failure to fulfill the duty of disclosure and obtain informed consent. This element assumes heightened importance in enhancement cosmetic procedures, where fault may sometimes be inferred from the mere failure to achieve the agreed result, particularly if the patient's consent was based on specific aesthetic promises or expectations (Federal Decree-Law No. 4 of 2016; Al-Wreikat et al., 2025).

Damage is an indispensable requirement for civil liability, as no liability exists in the absence of harm. In the context of cosmetic surgery, damage may take various forms, including physical harm such as disfigurement, medical complications, or loss of bodily function; psychological harm resulting from deterioration of appearance or failure to achieve the intended aesthetic improvement; and financial loss, whether due to additional treatment costs or loss of professional opportunities linked to appearance. UAE courts have increasingly adopted a flexible approach to assessing damage in cosmetic surgery cases, taking into account the special nature of these procedures and the severe psychological and social consequences that may result from their failure, even when the harm is not life-threatening (Elshama, 2024).

The third element is causation, which requires the existence of a direct causal link between the cosmetic surgeon's fault and the damage suffered by the patient, such that the harm constitutes a natural and direct consequence of the wrongful act. Establishing causation is one of the most complex aspects of medical liability litigation, particularly in cosmetic surgery cases, due to the interplay of multiple factors such as the patient's prior health condition, individual physiological responses, and medically recognized complications. For this reason, UAE law requires disputes to be referred initially to specialized medical liability committees tasked with assessing the existence of fault and its causal relationship to the damage before judicial proceedings commence. Nevertheless, courts may ease the burden of proof on patients in certain cases, especially in enhancement cosmetic procedures or where the error is manifest or the outcome is entirely inconsistent with what was agreed upon. This approach reflects a judicial inclination toward strengthening patient protection without endorsing absolute liability for surgeons (Al-Qaidi, 2024; Federal Supreme Court, 2025).

#### *The Role of the UAE Judiciary in Defining the Limits of Cosmetic Surgeon Liability*

The UAE judiciary has assumed a central role in completing the legal framework governing cosmetic surgeon liability, particularly in light of the absence of detailed statutory provisions expressly distinguishing between therapeutic and enhancement cosmetic surgery. Courts most notably the Federal Supreme Court have exercised their discretionary authority to characterize the nature of the cosmetic surgeon's obligation by reference to the nature and purpose of the disputed procedure, as well as the extent to which the patient's consent was linked to the achievement of a specific aesthetic result. Through this approach, judicial practice has contributed to filling legislative gaps and providing enhanced legal protection for patients without undermining the general principles of medical liability (Al-Qaidi, 2024).

Recent judicial trends indicate a more stringent approach toward holding cosmetic surgeons accountable, especially in enhancement cosmetic procedures. The courts have rejected the automatic application of the traditional rule limiting the physician's obligation to do care. In its 2025 judgment, the Federal Supreme Court held that a cosmetic surgeon may be liable for failure to achieve the agreed result where the procedure is not intended to treat a medical condition and where the patient's consent is based on a legitimate expectation of attaining a specific aesthetic outcome. This judicial orientation represents a qualitative shift in the concept of medical liability, as it reallocates the burden of proof and reinforces patient protection as the weaker party in the medical contractual relationship (Federal Supreme Court, 2025).

At the same time, the UAE judiciary has refrained from imposing absolute liability on cosmetic surgeons. Courts have remained mindful of medical and practical considerations, including potential complications, the patient's health condition, and the physician's compliance with the duty to explain risks and obtain valid informed consent. This judicial balance reflects an effort to achieve fairness between the patient's right to compensation for harm and the physician's right not to be held liable for outcomes beyond medical control or reasonable foreseeability. Accordingly, UAE judicial jurisprudence constitutes a dynamic and influential element in the development of the legal regime governing cosmetic surgery liability, in line with the evolving nature of this medical field (Elshama, 2024).

### *Convergence and Divergence between UAE Legislation and Islamic Sharia in the Field of Cosmetic Surgery*

An analysis of UAE legislation and Islamic Sharia reveals a considerable degree of convergence in the general principles governing cosmetic surgery, particularly with respect to the protection of human bodily integrity, the requirement of valid consent, and the imposition of liability on physicians in cases of error or transgression. Islamic Sharia recognizes the permissibility of therapeutic cosmetic surgery aimed at removing harm or correcting a defect, a position that aligns with UAE law, which subjects such procedures to the general rules of medical liability without imposing heightened standards, provided that the physician complies with established professional and scientific norms (Shubayr, 2012; Federal Decree-Law No. 4 of 2016).

However, areas of divergence become evident with regard to enhancement cosmetic surgery. Islamic Sharia adopts a more restrictive stance, requiring that such procedures not involve unjustified alteration of God's creation, not be motivated by frivolity or deception, and not result in actual or predominant harm. By contrast, UAE legislation does not impose comparable substantive restrictions on the permissibility of enhancement cosmetic procedures. Instead, it regulates such interventions primarily from the perspective of medical liability and informed consent, thereby allowing a broad range of enhancement cosmetic surgeries as long as the formal legal requirements are satisfied (Khalaf, 2023).

It may be argued that UAE judicial practice has, in certain instances, moved closer to the purposive (maqāsid-based) approach of Islamic Sharia by imposing stricter liability on cosmetic surgeons in enhancement procedures and by linking the permissibility of the intervention to the scope of the resulting liability. Subjecting cosmetic surgeons to a heightened obligation—potentially extending to the achievement of a specific result—constitutes an indirect mechanism for curbing unregulated expansion in enhancement cosmetic surgery and promotes practical harmony between positive law and the objectives of Islamic Sharia, particularly the preservation of human integrity and the prevention of harm. Accordingly, examining both convergence and divergence underscores the need for legislative development that integrates legal and Sharia considerations within a coherent regulatory framework (Al-Qaidi, 2024; Federal Supreme Court, 2025).

### **Conclusion**

This study concludes that cosmetic surgery constitutes a medical and legal field of exceptional specificity, given the intersection of medical, legal, and Sharia dimensions and the complex issues it raises concerning the nature of the cosmetic surgeon's obligation and

the scope of liability. The rapid expansion of cosmetic procedures especially enhancement surgeries has necessitated a reconsideration of traditional medical liability rules by both legislators and courts in order to achieve a fair balance between patient protection and avoiding the imposition of excessive liability on physicians.

The analysis demonstrates that UAE legislation, as embodied in Federal Decree-Law No. (4) of 2016 concerning Medical Liability, has established a general framework governing medical practice that encompasses cosmetic surgery without introducing specialized provisions reflecting its distinctive characteristics. This relative legislative gap has amplified the role of the UAE judiciary in completing the legal framework. Courts most notably the Federal Supreme Court have adopted a more stringent approach to cosmetic surgeon liability in certain cases, recognizing that the nature of enhancement cosmetic procedures may justify imposing an obligation to achieve a specific result rather than merely exercising due care, particularly where the patient's consent is based on a legitimate expectation of attaining a defined aesthetic outcome.

The study further shows that Islamic jurisprudence has addressed cosmetic surgery through a balanced purposive approach, permitting therapeutic cosmetic procedures aimed at removing harm while imposing strict conditions on the permissibility of enhancement surgeries in order to preserve human integrity and prevent unwarranted interference with the human body. The research reveals a notable convergence between Islamic Sharia and UAE legislation in general principles—especially the requirement of consent and the physician's liability in cases of fault—alongside certain divergences concerning the permissibility and regulation of enhancement cosmetic interventions.

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