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LEGAL ASPECTS OF PERFORMING AESTHETIC PROCEDURES

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Abstract
The aim of this article is to analyse the concept of aesthetic services, while also highlighting the variety of terminology used to describe the activities performed in this field. The article also attempts to define the qualifications necessary to carry out aesthetic procedures, including the qualifications that should be held by physicians performing services related to the modification or supplementation of anatomical structures.

The purpose of addressing this issue is to present the scope of the problem and to indicate that regulatory gaps concerning aesthetic services contribute to the de-professionalising of medical profession, the absence of rules establishing principles governing interference with the human body, and an increased risk to individuals who undergo aesthetic procedures performed by persons from outside the medical community.

The discussion is limited to Polish law, due to the significant diversity of solutions regarding aesthetic medicine services in other countries. The analysis conducted leads to the conclusion that the lack of legal regulations concerning the classification of healthcare services, their identification with healthcare services, as well as the absence of provisions defining the qualifications for their performance result in conceptual and classification chaos. This lack of clarity prevents the identification of instances in which persons performing such procedures exceed their professional competences, due to the absence of regulations specifying a catalogue of persons authorised to undertake such activities. There is an urgent need to regulate this matter, not only by standardising the certification process for medical skills in the field of aesthetic and reconstructive medicine, but also by introducing rules defining the principles of performing aesthetic procedures by persons practising medical professions other than that of physician, as well as by persons who have no formal connection to healthcare.

Keywords: aesthetic services, aesthetic medicine, medical law, aesthetic procedures, beauticians' qualifications, cosmetologists' qualifications

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The concept of aesthetic services is often identified with aesthetic medicine, although the two are not synonymous. Aesthetic services are perceived as more or less invasive procedures, and their performance is most often associated with medical professions. The term‘ ‘aesthetic medicine’ constitutes a kind of syncretism resulting from the merging of distinct elements, including activities performed by physicians despite the non-therapeutic nature of aesthetic procedures, as well as the lack of a formal and uniform educational process in the field of aesthetic medicine. The concept of‘ ‘aesthetic services’ may well be replaced by the term‘ ‘aesthetic procedures’, which not only fails to suggest their scope but also does not clearly define the qualifications necessary to perform them.

The above topic is widely discussed in legal literature, yet there are no clear and unambiguous regulations on these issues. This contributes to confusion over the cataloguing of aesthetic services and their classification, as well as to growing issues with clearly defining the qualifications and competences required to perform services aimed at improving, enhancing or altering people's appearance.

This article aims to analyse the concept of aesthetic services and also highlight the diverse meanings of activities performed within this type of service. Furthermore, the article sets out to determine the qualifications necessary to perform aesthetic services, including those aimed at modifying or supplementing anatomical structures.

The lack of clear legal regulations constitutes a starting point for arbitrarily classifying cosmetic procedures as aesthetic services and *vice versa*, as well as for equating services that merely aim to modify or improve appearance with healthcare services in the strict sense. Such legal uncertainty implies difficulty in defining which formal competences and education are necessary to provide aesthetic services. It further suggests that issues may arise in determining whether a person practising a profession other than a strictly medical one is exceeding their eligibility by undertaking aesthetic procedures that, due to their level of sophistication or the risk of negative consequences, should be performed, for example, by a physician. Moreover, even with regard to physicians, there are no regulations determining whether the provision of aesthetic services requires a specific medical specialisation, for example plastic surgery, or whether the mere possession of a licence to practise medicine is sufficient. This results in semantic and legal entropy, leading to aesthetic procedures being undertaken by individuals who lack appropriate medical qualifications or who do not practise medicine at all.

The article deliberately omits discussion of the rules of liability for performing aesthetic services without proper eligibility, because this issue goes beyond the scope of this already extensive work.

The analysis is based on legal regulations in force, the doctrine and case law pertaining to the issues discussed. The study makes use of a formal-dogmatic method, employing linguistic and systemic interpretation of the regulations, as well as an analysis of case law and the positions presented in the literature.

INTRODUCTION

'Aesthetic services' is a term encompassing a wide range of activities aimed at improving, enhancing or correcting appearance, or maintaining a desired appearance for as long as possible (so-called anti-ageing medicine). 'Anti-ageing' treatments were often performed in ancient Rome. The imperfections of beauty resulting from the ageing process played a more significant role in women's lives. Signs of ageing in men, such as grey hair and wrinkles, were perceived as assets symbolising wisdom and high social status.[1] In ancient Rome, beauty enhancement was defined as *venenum*[2] and *veneficium*,[3] which identified magical means, medicines and poison, and the practice of witchcraft for medical and *quasi*-medical purposes unrelated to treatment, respectively.

The era of aesthetic and reconstructive surgery began in 1597, when the Italian physician Gaspare Tagliacozzi reconstructed a nose using skin flaps from a patient's shoulder.[4] On 31 May 1916, the otolaryngologist Dr Harold Gilles successfully reconstructed the eyelids of a patient who had suffered extensive facial injury and the loss of his upper and lower eyelids during the Battle of Jutland, and transplanted a 'mask' formed from the patient's own skin.

In 1871, T. Fox described the use of a 20% phenol solution to lighten the skin.[5] In 1882, P.G. Unna demonstrated the properties of the first chemical peels, including salicylic acid, resorcinol, phenol and trichloroacetic acid, which are still used for aesthetic purposes.[6] In 1893, F. Neuber performed the first procedure involving autologous fat grafting to fill soft tissue.[7] In 1895, the Austrian-German physician V. Czerny used fat tissue obtained from a lumbar lipoma to correct breast asymmetry resulting from tumour eradication.[8] In 1889, R. Gersuny used liquid paraffin to inject breasts, but the results of his experiments proved to be disastrous.[9] At the beginning

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1 W. Suder, 'Moda na zmarszczki w starożytnym Rzymie. Streszczenie', in: *Kosmetologia wczoraj, dziś i jutro. Materiały konferencyjne*, Wrocław, 2012.

2 A. Johnson, P. Coleman-Norton, F. Bourne, *Ancient Roman Statutes*, Vol. II, Austin, 1961, p. 65. The meaning of the word *venenum* is explained by J. Ermann, *Strafprozess, öffentliches Interesse und private Strafverfolgung. Untersuchungen zum Strafrecht der römischen Republik*, Köln, 2000, pp. 48 et seq.

3 R. MacMullen, *Enemies of the Roman Order*, London, 1967, pp. 95–127.

4 P. Tomba, A. Viganò, P. Ruggieri, A. Gasbarrini, 'Gaspare Tagliacozzi, Pioneer of Plastic Surgery and the Spread of His Technique Throughout Europe in "De Curtorum Chirurgia per Insitionem"', *European Review for Medical and Pharmacological Sciences*, 2014, Vol. 18, No. 4, pp. 445–450.

5 V.M. Yokomizo, T.M. Benemond, C. Chaska, P. Benemond, 'Chemical Peels: Review and Practical Applications', *Surgical & Cosmetic Dermatology*, 2013, Vol. 5, No. 1, pp. 58–68.

6 N. Krueger, S. Luebberding, G. Sattler, C.W. Hanke, M. Alexiades-Armenakas, N. Sadick, 'The History of Aesthetic Medicine and Surgery', *Journal of Drugs in Dermatology*, 2013, Vol. 12, No. 7, pp. 737–742.

7 F. Neuber, 'Fettransplantation', *Verhandlungen der Deutschen Gesellschaft für Chirurgie*, 1893, Vol. 22, p. 66.

8 N. Anderson, 'Lawsuit Science: Lessons from the Silicone Breast Implant Controversy', *New York Law School Law Review*, 1997, Vol. 41, pp. 401–407.

9 W.G. Stevens, E.M. Hirsch, D.A. Stoker, R. Cohen, 'In Vitro Deflation of Pre-Filled Saline Breast Implants', *Plastic and Reconstructive Surgery*, 2006, Vol. 118, pp. 347–349.

of the 20th century, physicians began to explore other substances to help enlarge breasts. Surgical materials used included ivory, glass beads, caoutchouc, bovine cartilage, cotton, pieces of polyethylene, polyurethane sponge, silicone rubber and Teflon-silicone prostheses. In the 1950s, synthetic agents were widely used, including liquid silicone injected directly into breast tissue, which led to the development of fibromas and sclerosis requiring surgical treatment, including mastectomy.[10]

In 1929, the French surgeon Charles Dujarrier removed a lipoma from the calf of a dancer who wanted to improve the 'indecent appearance of her legs'. The procedure was performed with the use of a urological curette, and complications resulted in amputation of the limb.[11] In 1980, A. Fischer and G. Fischer performed the first liposuction procedure.[12] In the 1990s and at the end of the 20th century, aesthetic procedures became widespread and included wrinkle reduction with the use of botulinum toxin,[13] wrinkle fillers with the use of hyaluronic acid,[14] injectable lipolysis with phosphatidylcholine for fat reduction, and a combination of radiofrequency and pulsed magnetic fields.

Numerous definitions of aesthetic medicine coexist in the literature on the topic and among professionals involved in the provision of aesthetic services. It is generally accepted that aesthetic medicine is a component of so-called medical cosmetology.[15]

Aesthetic medicine is defined, *inter alia*, by G. Pfenninger and J. Fowler, who point out that 'it is the most rapidly developing field of medicine, whose main task is to use non-invasive methods for facial skin renewal. It combines safety, effectiveness and expected post-effects.'[16] According to R. Śpiewak, aesthetic medicine is

> 'an element of medical cosmetology, which includes aesthetic dermatology, aesthetic dentistry, aesthetic surgery, and cosmetology. Its main goal is to create and improve physical attractiveness through the use of non-invasive methods. It strives to replace the subjective opinions of practitioners with unbiased measurements of the impact of a given aesthetic intervention on the client's attractiveness in the eyes of others'.[17]

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[10] J.H. Tanne, 'FDA Approves Silicone Breast Implants 14 Years After Their Withdrawal', *British Medical Journal*, 2006, Vol. 333, p. 1139.

[11] T.C. Flynn, W.P. Coleman, L.M. Field, J.A. Klein, C.W. Hanke, 'History of Liposuction', *Dermatologic Surgery*, 2000, Vol. 26, No. 6, pp. 515–520.

[12] G. Fischer, 'First Surgical Treatment For Modeling Body's Cellulite With Three 5 mm Incisions', *Bulletin of the International Academy of Cosmetic Surgery*, 1976, No. 3, p. 35.

[13] A. Carruthers, J. Carruthers, 'Historia zastosowania toksyny botulinowej w celach kosmetycznych' in: Carruthers A., Carruthers J., Dover S.J., Alam M. (eds), *Toksyna botulinowa*, Polish edition: ed. by Ignaciuk A., transl. Ziarkiewicz, M., Wrocław, 2019, p. 15.

[14] M. Olenius, 'The First Clinical Study Using a New Biodegradable Implant for the Treatment of Lips, Wrinkles, and Folds', *Aesthetic Plastic Surgery*, 1998, Vol. 22, No. 2, pp. 97–101.

[15] R. Śpiewak, 'Estetologia medyczna, medycyna estetyczna, dermatologia estetyczna, chirurgia estetyczna, ginekologia estetyczna, stomatologia estetyczna – definicje i wzajemne relacje poszczególnych dziedzin', *Estetologia Medyczna i Kosmetologia*, 2012, Vol. 2, No. 3, pp. 70–71.

[16] G. Fowler, J. Pfenninger, *Procedury zabiegowe i diagnostyczne w dermatologii i medycynie estetycznej*, Polish edition: ed. by Kaszuba A., transl. Bartkowiak R., Błaszczyna N., Gerlicz-Kowalczuk Z., Wrocław, 2012.

[17] R. Śpiewak, 'Estetologia medyczna…', op. cit., pp. 69–71.

In turn, K. Napiwodzka Bulek emphasises that:

> 'Within aesthetic treatments, patients can select specific body parts for improvement. This allows them to achieve a perfect appearance. The spectrum of aesthetic treatments is constantly expanding with the use of new technologies to meet the needs of clients.'[18]

It is also pointed out in the literature that aesthetic medicine is one whose goal is not to cure, but merely to fulfil the wishes of persons undergoing such treatments. Therefore, aesthetic medicine is called wish-fulfilling medicine.[19]

DIFFERENTIATION OF THE CONCEPTS OF AESTHETIC PROCEDURES, MEDICAL PROCEDURES AND PRACTITIONER'S PROCEDURES

The terminology used to describe the activities that are, or may be, related to aesthetic services forms a chaotic catalogue. The use of significantly different terms to describe similar activities leads to the erroneous attribution of invasive features or increased risk to some activities, and may also diminish their significance and impact on the human body.

The most frequently used terms, often identified as synonyms, are discussed below. This is erroneous both as regards the object of the activity they describe and the scope of competences necessary to perform them.

AESTHETIC PROCEDURES

According to the Polish language dictionary, the word 'aesthetics' [*estetyka*] should be understood as 'a nice, tasteful appearance of something', 'a sense of beauty'.[20] In turn, the word 'procedure' [*czynność*] means 'the performance of something', 'the functioning, operation of something'.[21] The synthesis of both words leads to the phrase 'the performance of something that aims at a nice appearance and a sense of beauty'.

It seems reasonable to assume that aesthetic procedures may be performed by anyone who has the necessary qualifications and skills. In this context, the catalogue of aesthetic procedures is really broad, as it should include basic, simple procedures such as cosmetic ones, body hair removal, permanent make-up, tattoos and piercing. Some of these procedures involve a violation of bodily integrity (e.g. piercing) or bodily integrity and permanent penetration into the body of a person undergoing it (e.g. tattooing), which implies the need to apply the principles of septic and aseptic

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[18] K. Napiwodzka-Bulek, 'Medycyna estetyczna – humanistyczne dążenie czy "enhancement"?', *Filozofia Publiczna i Edukacja Demokratyczna*, 2017, Vol. 6, No. 1, pp. 151–166.

[19] C.E. Asscher, M. Schermer, 'Wish-Fulfilling Medicine in Practice: The Opinions and Arguments of Lay People', *Journal of Medical Ethics*, 2014, Vol. 40, No. 12, pp. 837–841.

[20] https://sjp.pwn.pl/slowniki/estetyczna.html (accessed: 23 December 2023).

[21] https://sjp.pwn.pl/szukaj/czynno%C5%9B%C4%87.html (accessed: 23 December 2023).

techniques, and thus the use of necessary medical devices and medical sterilisation techniques.

Aesthetic procedures involving penetration into the human body or violating its integrity are often performed by beauticians, tattoo artists and permanent make-up (PMU) artists. The above-mentioned persons are not required to have medical education in order to perform aesthetic procedures, although the procedures they perform within these two professions involve not only violating bodily integrity but also penetrating the human body. In the author's opinion, the limits of the scope of eligibility to perform aesthetic procedures should be determined based on the subject-matter criterion, i.e. the scope (invasiveness and level of health risk) and the purpose of the procedures (corrective, appearance-enhancing, non-therapeutic but strictly medical in nature, and ultimately therapeutic ones).

MEDICAL PROCEDURE, THERAPEUTIC PROCEDURE, PRACTITIONER'S PROCEDURE, SURGICAL PROCEDURE

It is indicated in the literature[22] that terminology is inconsistent when it comes to the explanation and interpretation of the terms 'medical procedure', 'therapeutic procedure' and 'practitioner's procedure'. The Act on the Professions of a Physician and a Dentist (hereinafter referred to as 'the APD'),[23] the Act on Patients' Rights and the Patients' Ombudsman,[24] and the Act on Healthcare Services Financed from Public Funds[25] use the term 'healthcare services'. In the Act: Criminal Code (hereinafter referred to as 'the CC'),[26] the legislator uses the term 'therapeutic procedure' (Article 192 CC) and 'practitioner's procedure' (Article 162 CC). In turn, the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Biomedicine uses the term 'medical intervention'.[27] The doctrine, on the other hand, uses the terms 'medical procedure',[28] 'therapeutic procedure', as well as 'medical service'.[29]

A medical procedure, as the linguistic interpretation of the concept directly implies, aims to achieve a therapeutic goal, which constitutes an inherent component

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[22] R. Rejmaniak, 'Problemy interpretacyjne wybranych pojęć zawartych w art. 192 k.k.', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2012, No. 4, p. 68.

[23] Act on the Professions of a Physician and a Dentist of 5 December 1996, consolidated text, Journal of Laws of 2024, item 1287.

[24] Act on Patients' Rights and the Patients' Ombudsman of 6 November 2008, consolidated text, Journal of Laws of 2024, item 581.

[25] Act on Healthcare Services Financed from Public Funds of 27 August 2004, consolidated text, Journal of Laws of 2024, item 146.

[26] Act: Criminal Code of 6 June 1997, consolidated text, Journal of Laws of 2025, item 383.

[27] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Biomedicine adopted by the Council of Ministers on 19 November 1996; https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/ETS164Polish.pdf (accessed: 29 December 2023).

[28] M. Świderska, *Zgoda pacjenta na zabieg medyczny*, Toruń, 2007, pp. 17 et seq.

[29] I. Bernatek-Zaguła, *Prawo pacjenta w Polsce do informacji medycznej*, Toruń, 2008, p. 68; M. Śliwka, *Prawa pacjenta w prawie polskim na tle prawnoporównawczym*, Toruń, 2008, p. 125.

of healthcare services in the strict sense. The purpose of a therapeutic procedure is to improve, enhance or maintain health, which is why this type of activity is classified as a therapeutic activity in the form of a procedure.[30] In turn, a therapeutic activity is any action undertaken on a patient at the stage of prevention, diagnosis, therapy and rehabilitation aimed at saving life and health, or reducing physical and mental suffering.[31]

Procedures may also be non-therapeutic in nature. They form a specific group of activities because their performance sometimes involves very complex and highly invasive procedures. However, they are not directly aimed at improving health, but only at an intervention designed to achieve an intended effect that may improve the health of another person or constitute the exercise of an individual's subjective rights, e.g. the right to family planning. Examples include, *inter alia*, abortion pursuant to the condition laid down in Article 4a(1)(3) of the Act on pregnancy termination[32] or the collection of cells, tissues and organs from living donors for the benefit of other persons in accordance with the provisions of Chapter 3 of the Act on Transplantation.[33]

In turn, a practitioner's activity should be identified with any activity undertaken with the use of well-known medical techniques and procedures targeted at the human body,[34] although it does not have to be invasive in nature or associated with an increased risk of adverse effects or complications. Practitioner's activities may include activities related to a physical examination and interview, as well as issuing prescriptions, certificates, decisions or opinions.[35]

The term 'practitioner's procedure' merely defines the subjective criterion for performing the procedure by a person licensed to enter the medical profession.[36] This does not mean, however, that the practitioner's procedure must be directed towards a therapeutic goal related to a disease in the biological-medical sense. Practitioner's procedures may take the form of invasive procedures that violate the integrity of the human body, or procedures that penetrate the patient's body without violating its integrity. They may be solely aimed at improving or correcting a patient's appearance and performed solely on the basis of the subjective needs of the person undergoing the procedure.

The above considerations are intended to demonstrate that the terminology used in relation to procedures interfering with the human body is complex and heterogeneous. A procedure may be intended to achieve a therapeutic goal,

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30 P. Daniluk, 'Cel leczniczy w świetle poglądów doktryny prawa', *Prawo i Medycyna*, 2005, No. 2, p. 37.

31 Cf. P. Daniluk, 'O pojęciach "zabieg leczniczy" i "pacjent" w rozumieniu art. 192 § 1 k.k.', *Prawo i Medycyna*, 2011, No. 4, p. 66.

32 Act on Family Planning, Protection of the Human Foetus and Conditions for Pregnancy Termination of 7 January 1993, consolidated text, Journal of Laws of 2022, item 1575.

33 Act on the Collection, Retention and Transplantation of Cells, Tissues and Organs of 1 July 2005, consolidated text, Journal of Laws of 2023, item 1185.

34 M. Filar, *Lekarskie prawo karne*, Kraków, 2000, pp. 247–248.

35 M. Boratyńska, P. Konieczniak, in: Boratyńska M., Konieczniak P., Zielińska E. (eds), *System Prawa Medycznego. Tom II. Część 1. Regulacja prawna czynności medycznych*, Warszawa, 2019, passim.

36 S. Dubisz (ed.), *Uniwersalny słownik języka polskiego. Tom. 2: K–Ó*, Warszawa, 2003, p. 415.

a non-therapeutic goal, involve significant invasiveness or no violation of bodily integrity. If it is assumed that a procedure amounts to a form of intervention, it follows that the use of the term 'procedure' to describe aesthetic procedures is fully justified, regardless of the competence of the individuals who perform them.

SCOPE OF THE TERM 'AESTHETIC PROCEDURES'

The principles governing aesthetic procedures are not regulated by medical law. Similarly, there is no uniform case law specifying the catalogue of procedures that may be performed by healthcare professionals or other individuals. The judgment of the District Court in Olsztyn of 30 October 2015, case No. IX W 3057,[37] indicates that:

> 'The applicable legislation undoubtedly lacks a clear division as to which procedures may be performed by beauticians, which by cosmetologists, and which are reserved exclusively for physicians specialising in aesthetic medicine. The basic criterion for the division of eligibility to perform procedures is whether the dermal-epidermal junction is disrupted during their performance. It is beyond doubt that only physicians and nurses possess the appropriate qualifications and knowledge to perform subcutaneous injections. Another criterion is the invasiveness of the procedure itself.'

While the criterion of invasiveness would be justified, in the author's opinion the criterion of disruption of the dermal-epidermal junction does not deserve approval. Disruption of skin continuity is associated with many activities performed by, for example, beauticians, cosmetologists, as well as PMU artists, tattoo artists and piercers, which results from the specific nature of their activities. A consistent assumption that disruption of skin continuity requires that a person trained in medicine should perform the procedure would result in the mandatory performance of body piercing or tattooing procedures by such persons. Furthermore, in recognising the competence of physicians and nurses to perform procedures involving disruption of skin continuity, the court did not address the permissible scope of violation of bodily integrity, but only the justification for the violation itself by persons practising these professions.

The above-presented position is not rationally justified. Many medical professionals, including paramedics, have the right to break skin integrity, but the scope of these activities includes the ability to independently perform highly invasive and high-risk procedures, such as needle puncture.[38] Invasive procedures involving breaking skin integrity may also be performed by diagnosticians, as well as persons authorised to administer mandatory and recommended vaccinations,

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[37] Judgment of the District Court in Olsztyn of 30 October 2015, case No. IX W 3057, LEX No. 1922700.

[38] Regulation of the Minister of Health of 22 June 2023 on medical rescue procedures and healthcare services other than medical rescue procedures that may be provided by paramedics, Journal of Laws of 2023, item 1180.

including school hygienists and pharmacists, to the extent applicable to COVID-19 vaccinations.[39]

It is necessary to point out that the performance of medical procedures does not in general depend on the possession of special competences or the completion of specialist training by this group of professionals.

PRACTITIONER'S AESTHETIC PROCEDURES

Practitioner's non-therapeutic procedures, including aesthetic ones, may be performed by a person licensed to practise medicine and possessing the practical skills and qualifications to perform specific procedures. Based on the linguistic and literal interpretation of the term 'practitioner's procedure', it should be assumed that such procedures require basic medical knowledge, i.e. their performance requires knowledge of anatomical structures and physiological mechanisms governing the course of life functions. Physicians may perform practitioner's procedures regardless of their specialisation, and the location where they are performed depends directly on the specific nature of the procedures undertaken. It is necessary to emphasise that the word 'procedure' itself should not be associated with a high-risk activity, nor with specific conditions for its performance, including the need to use strictly defined tools, *modus operandi*, or facilities such as an operating theatre. Soft tissue fixation (e.g. skin suturing) with the use of basic medical instruments can be done by any physician in an outpatient setting, while the same procedure, if it is merely an integral part of a larger intervention (e.g. surgery), should be performed by a surgeon in an operating theatre.

The term 'surgical procedure' is distinct from the concept of a practitioner's procedure. It is used in Article 34(1) APD, where it is equated with intervention in the human body with the use of techniques and skills that require prior completion of strictly defined specialist training.

Although such a distinction is not made in Poland, in foreign literature surgical procedures, including aesthetic ones, unlike plastic and reconstructive surgery, are referred to as *surgery de fantasie* or *de caprice*.[40]

When applying the terms 'surgical procedure' and 'practitioner's procedure' to aesthetic services, it should be pointed out that practitioner's procedures aimed at augmenting anatomical structures (e.g. face volumetry) may be performed by a physician or a dentist, and do not require a specific specialisation, such as plastic surgery or general surgery. In contrast, surgical procedures aimed at augmenting anatomical structures, e.g. breast implant placement for the purpose of breast augmentation, can only be performed by a physician specialised in plastic surgery.

When analysing the concepts of 'procedure' and 'operation', it is necessary to pay attention to the adjectives 'minimally invasive' and 'highly invasive', as well

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[39] Article 21c(2)(2) of the Act on Combating Infections and Contagious Diseases in Humans of 5 December 2008, consolidated text, Journal of Laws of 2023, item 1284.

[40] P. Le Tourneau, L. Cadiet, *Droit de la responsabilité civile*, Paris, 2002, p. 508.

as 'invasive' and 'non-invasive', which frequently appear in conjunction with the aforementioned terms. The division into invasive and non-invasive procedures was presented in the literature by A. Buczyński and G. Henrykowska, who classified cosmetic procedures with the use of electromagnetic radiation among non-invasive procedures.[41] The judgment of the Appellate Court in Katowice of 29 September 2015, case No. I ACa 408/15, emphasises that minimally invasive surgery may also involve cutting the body's integument and penetrating the spine, making an incision and removing tissue, as well as suturing wounds.[42] In turn, the judgment of the Appellate Court in Szczecin of 11 December 2014, case No. IACa 616/14, indicates that a sympathectomy procedure (severing the continuity of the nerves responsible for stimulating sweat secretion) performed using a video-assisted thoracoscopic method is minimally invasive.[43] Similarly, judgment of the Appellate Court in Łódź of 19 October 2017, case No. IACa 281/17, mentions a minimally invasive method of aortic treatment in the form of puncture of the right femoral artery and implantation of a stent graft into the aorta to seal the rupture site.[44]

Annex No. 1 to the Regulation of the Minister of Health on guaranteed services in the field of hospital treatment includes the following terms: invasive removal of a bone growth stimulator, invasive treatment of acute coronary syndromes, invasive cardiac diagnostics, performance of invasive electrotherapy procedures, invasive and non-invasive continuous blood pressure monitoring, and invasive electrophysiological tests.[45] Information available in the general media often refers to minimally invasive procedures, which, contrary to initial associations, are surgical procedures.[46] Examples include, *inter alia*, video-assisted thoracoscopic procedures and laparoscopic procedures, such as abdominal or inguinal hernia repair. Regardless of the terminology used, the scope of invasive procedures should not be determined by linguistic interpretation, but by the level of risk involved. Therefore, minimally invasive surgical procedures are not equivalent to micro-invasive procedures, which can be performed for aesthetic purposes, for example, by non-medical professionals. At the same time, high-risk procedures, such as pituitary tumour removal, can be performed with the use of an endoscope (a minimally invasive method), which does not preclude far-reaching and potentially dangerous complications.

In the author's opinion, the term 'procedure' should not be associated with an intervention the purpose of which determines its clear classification into the category of therapeutic or medical activities. As a result of the Act on Certain Medical Professions,

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[41] A. Buczyński, G. Henrykowska, in: Denys A. (ed.), *Zagrożenia zdrowia publicznego. Zdrowie człowieka a środowisko*, Warszawa, 2015, p. 233.

[42] Judgment of the Appellate Court in Katowice of 29 September 2015, case No. I ACa 408/15, LEX No. 1927481.

[43] Judgment of the Appellate Court in Szczecin of 11 December 2014, case No. I ACa 616/14, LEX No. 1668686.

[44] Judgment of the Appellate Court in Łódź of 19 October 2017, case No. I ACa 281/17, LEX No. 2471788.

[45] Regulation of the Minister of Health of 22 January 2013 on guaranteed services within hospital treatment, Journal of Laws of 2023, item 870.

[46] https://www.medtronic.com/covidien/pl-pl/patient-information/keyhole-mis-surgery-awareness.html (accessed: 22 December 2023).

which entered into force on 26 March 2014 (hereinafter referred to as 'the AMP'),[47] the catalogue of medical professions has been significantly expanded. Persons practising medical professions, including massage technicians or dental assistants, may perform procedures the purpose and nature of which depend on their formal competences.

The concept of a procedure should be contrasted with that of aesthetic services, which can take the form of invasive, micro-invasive and non-invasive procedures. This requires an analysis of the qualifications and competences necessary to perform aesthetic services that involve increased risk and the nature of which involves the violation of bodily integrity or penetration into the human body. While aesthetic procedures that may be classified as healthcare services should be performed by persons having the theoretical and practical qualifications to perform them, activities aimed at improving or enhancing appearance may also be performed by persons who do not have formal qualifications, but have an appropriate level of skills and competences acquired in the process of practical education (annotation by JKC).

QUALIFICATIONS NECESSARY TO PROVIDE AESTHETIC SERVICES

The Presidium of the Supreme Medical Council (SMC) addressed the issue of qualifications necessary to perform aesthetic procedures in its position on the performance of procedures within the category of aesthetic medicine.[48] The cited document states that '(…) whether a given procedure in the field of aesthetic medicine constitutes a health service should be determined on a case-by-case basis (…).' In all invasive procedures in the field of aesthetic medicine, the component procedures that comprise them are medical procedures and, for the reasons stated below, are reserved for persons with appropriate competencies. The SMC Presidium indicated that the aesthetic procedures most frequently performed include injections involving the administration of botulinum toxin and pointed out that:

> '(…) the Characteristics of Medical Products containing botulinum toxin indicates that it is intended for use in "patients" (not clients). Injections are also performed with the use of hyaluronic acid, which is classified as a medical product (…) Procedures with the use of hyaluronic acid-based fillers, which are among the safest procedures in aesthetic medicine, are not without the risk of complications, even such as vessel occlusion and associated necrosis, blindness or stroke, recently described in the literature.'

The Presidium of the Supreme Medical Council emphasises in its Position No. 6/14/P-VII that only physicians may administer medicinal and medical products applied in the field of aesthetic medicine, the use of which involves injections.[49]

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[47] Act on Certain Medical Professions of 17 August 2023, Journal of Laws of 2023, item 972, as amended.

[48] Position No. 48/21/P-VIII of the Presidium of the Supreme Medical Council of 15 April 2021 concerning eligibility to perform procedures within aesthetic medicine; https://nil.org.pl/uploaded_files/documents/doc_1618813489_ps048-21-viii.pdf (accessed: 22 June 2025).

[49] Position No. 6/14/P-VII of the Presidium of the Supreme Medical Council of 25 April 2014 supporting the position of the Polish Aesthetic and Anti-Ageing Medicine Association con-

It is indicated in the literature that only physicians should perform certain aesthetic procedures while non-medical professionals could perform those that are non-therapeutic in nature and minimally invasive.[50] In practice, physicians, dentists, nurses, midwives, as well as beauticians, cosmetologists and paramedics perform aesthetic procedures.

The performance of aesthetic procedures by beauticians is the most controversial issue. This profession is a type of service provider whose activity consists in beauty treatment.

> 'A beautician's work is individual and is performed independently based on one's knowledge, practical skills and professional declaration. A beautician's duties primarily include the performance of cosmetic treatments, such as cleansing, exfoliating and moisturising the skin of the face, neck and décolleté. The next group of treatments includes beauty and decorative treatments, and treatments with the use of physical factors, with particular emphasis on light, electricity, water, temperature and ultrasound (…).'[51]

Practising as a beautician does not require a university degree, but only the completion of a vocational school, technical school or post-secondary school, or the completion of qualification courses for this profession. A beautician's profession is a craft; therefore, the acquired qualifications may also be confirmed by journeyman or master examinations. In the course of their training, beauticians do not acquire medical knowledge necessary to perform invasive procedures associated with hypothetically high health risks or to manage adverse events related to the procedure performed.

The position on the lack of competence of beauticians to perform aesthetic procedures is highlighted in the judgment of the District Court in Gliwice of 6 November 2019, case No. VI Ka 581/19: 'No legal act in Poland indicates that skin disruption is the exclusive domain of a physician, as similar epidermal damage or skin disruption also occurs in tattoo, podiatry, piercing and permanent make-up studios'.[52]

Doubts are also raised as to whether cosmetologists, whose education takes place at medical universities, have qualifications to perform aesthetic procedures.[53]

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cerning the performance of practitioner's aesthetic medicine procedures by persons who are not authorised to apply medical devices and products for this purpose. See https://nil.org.pl/dla-lekarzy/prawo/medycyna-estetyczna/5032-stanowisko-prezydium-nrl (accessed: 22 June 2025).

[50] R. Kubiak, in: Boratyńska M., Konieczniak P. (eds), *System Prawa Medycznego. Tom II. Część 2. Regulacja prawna czynności medycznych*, Warszawa, 2019, p. 786.

[51] https://psz.praca.gov.pl/web/urzad-pracy/rynek-pracy/bazy-danych/klasyfikacja-zawodow-i-specjalnosci/wyszukiwarka-opisow-zawodow/-/klasyfikacja_zawodow/zawod/514202 (accessed: 22 December 2023).

[52] See judgment of the District Court in Gliwice of 6 November 2019, case No. VI Ka 581/19; https://orzeczenia.gliwice.so.gov.pl/content/$N/151515000003006_VI_Ka_000581_2019_Uz_2019-11-06_001 (accessed: 29 December 2023).

[53] See https://rekrutacja.umed.lodz.pl/studia-w-jezyku-polskim/kosmetologia/ (accessed: 6 March 2026). In the description of the field of study, it is indicated that: 'Cosmetology is a dynamically developing field of knowledge with enormous market potential. The demand for advanced treatments that correct or restore beauty, eliminating unwanted skin lesions and other imperfections, is increasing year by year. To be able to practise as a cosmetologist, undertake studies that will allow you to acquire the necessary qualifications and skills. Become a professional'; https://studia.uj.edu.pl/kierunki/wfarm/kosmetologia (accessed: 6 March 2026). The description of the field emphasises that 'Cosmetology combines medical and pharmaceutical

The cosmetology curriculum includes subjects such as anatomy, physiology, pathophysiology, general chemistry, biochemistry, aesthetic cosmetology, pharmacology, clinical and procedural cosmetology, and clinical and procedural dermatology.[54] Even though cosmetology is not a medical profession, the educational process equips students with the formal knowledge necessary to perform procedures. It should be emphasised that for tax purposes, the occupation of a cosmetologist is identified with medical professions. The interpretation of the Tax Chamber in Bydgoszcz of 23 September 2011 indicates that:

> 'Although the profession of a cosmetologist is not regulated by separate legal acts, the powers and scope of services provided indicate that a person who has acquired education in the field of cosmetology is a person entitled to provide healthcare services[55] and a person who has professional qualifications to provide healthcare services in the field of medicine.'[56]

The District Court in Olsztyn addressed the issue of providing services related to the violation of bodily integrity in its judgment of 22 March 2016, case No. VII Ka 52/16,[57] concerning a beautician performing a procedure of injecting and subcutaneously administering hyaluronic acid into the tear duct of both eyes. The accused had completed training in aesthetic fillers, needle mesotherapy for the face and body, temporary wrinkle removal, and a course in hyaluronic acid injections. As a result of the procedure, the injured party suffered complications such as swollen eyes, intense tearing, large dark circles under the eyes and a fever. The Court did not find the beautician guilty, as she was charged with the offence specified in Article 58(1) APD. According to the Court, the procedure performed was not therapeutic in nature, but clearly related to the improvement of appearance. Therefore, the accused did not violate the rules laid down in Article 58 APD, which provides a penalty for providing healthcare services by persons lacking formal eligibility in this regard. Importantly, the Court did not negatively assess the competence of beauticians in performing aesthetic procedures, nor did it indicate that such procedures should be performed exclusively by medical professionals. Furthermore, the Court emphasised that the findings of the court of first instance are unacceptable insofar as they indicate that skin rupture is the sole domain of physicians (or nurses). This stems from the fact

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sciences, as well as health and physical education sciences. Education in this field meets the needs of the dynamically developing cosmetics industry. (…) Currently, areas related to care and therapeutic cosmetology, as well as aesthetic medicine, are also very important in this industry. For this reason, cosmetology education is focused on developing a critical and knowledge-based approach to the new cosmetology services offer, where issues of protection, care and treatment of dermatological conditions are intensively intertwined.'

[54] https://farmacja.umed.pl/wp-content/uploads/2021/05/Zalacznik-nr-11-kosmetologia-I-stopnia.pdf (accessed: 22 September 2023).

[55] Parenthetically, it should be emphasised that the suggestion to recognise the cosmetologist profession as a medical one was first put forward around 1947. See I. Rudowska, *Kosmetyka lekarska*, Warszawa, 1957, p. 3.

[56] Individual interpretation of the Tax Chamber in Bydgoszcz of 23 September 2011, ITPP1/443-989/11.

[57] See judgment of the District Court in Olsztyn of 22 March 2016, case No. VII Ka 52/16, LEX No. 2022754.

that similar epidermal damage or skin rupture also takes place in services provided in tattoo, podiatry and permanent make-up studios.[58]

At the time of the article's preparation, the Ministry of Health issued the Announcement concerning the performance of aesthetic and reconstructive medicine procedures.[59] The performance of aesthetic and reconstructive medicine procedures requires a prior physical examination and an interview with the patient, additional diagnostic tests, an assessment of the risks associated with the use of injectable medications and fillers, the exclusion of contraindications, the maintenance of medical records, proper management of medical waste, and the possession of the skills and authorisation necessary to implement treatment of the effects of complications.

The provisions of the Regulation of the Minister of Health of 13 June 2023 on the professional skills of physicians and dentists (Journal of Laws of 2023, item 1189) formalised aesthetic and reconstructive medicine as a certified professional skill of physicians and dentists. The regulations in force indicate that medical procedures within the scope of professional skills (including aesthetic and reconstructive medicine procedures) are healthcare services provided by physicians. Anyone who does not hold the professional qualifications of a physician is not authorised to perform aesthetic and reconstructive medicine procedures. Therefore, representatives of other medical professions, cosmetologists, beauticians and other individuals are not authorised to perform them, despite the fact that they hold certificates of completed training in any aesthetic medicine procedure. Certificates in the field of aesthetic and reconstructive medicine procedures obtained by unauthorised persons during training or courses only confirm the completion of such courses but do not authorise their holders to perform them, which is also stated in the position of the then merged Ministry of Education and Science.[60]

The above-mentioned Announcement of the Ministry of Health is not mandatory due to its non-regulatory nature. The Announcement refers to aesthetic and reconstructive medicine, which, due to its very nature, and regardless of the position of the Ministry of Health, must be performed by physicians because of the therapeutic nature of these activities. The Announcement of the Ministry of Health does not address activities undertaken to improve or enhance appearance, the nature of which is not therapeutic in nature. It should be emphasised that the Announcement is not

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[58] E. Kozak, 'Podanie kwasu hialuronowego przez osobę nieuprawnioną a odpowiedzialność karna. Glosa częściowo krytyczna do wyroku Sądu Okręgowego w Olsztynie z dnia 22 marca 2016 roku, sygn. VII Ka 52/16', *Roczniki Administracji i Prawa*, 2022, No. 1, pp. 255–266.

[59] Announcement of the Ministry of Health on the performance of aesthetic and reconstructive medicine procedures of 23 January 2026; see https://www.gov.pl/attachment/aaade18c-c25a-412c-b78a-03fab33a1d88 (accessed: 6 March 2026).

[60] The Announcement of the Ministry of Health on the performance of aesthetic and restorative medicine procedures includes a list of procedures that may only be performed by a professional physician. These include procedures using: (a) botulinum toxin; (b) cross-linked hyaluronic acid (volumising, lifting, modelling); (c) polylactic acid; (d) calcium hydroxyapatite; (e) polycaprolactone; and (f) mesotherapy using non-cross-linked hyaluronic acid, amino acids, vitamins, polynucleotides, collagen, micro- and macroelements, peptides, enzymes, coenzymes and medications for the purposes of treatment, reconstruction, revitalisation and anti-ageing prevention; (g) platelet-rich plasma and fibrin procedures.

accompanied by any amendments to the regulations on the taxation of aesthetic and reconstructive medicine services, i.e. exemption from VAT due to their classification as healthcare services in the strict sense.

QUALIFICATIONS NECESSARY TO PROVIDE AESTHETIC SERVICES RELATED TO THE SUPPLEMENTATION AND MODIFICATION OF ANATOMICAL STRUCTURES

The level of qualifications necessary to provide aesthetic services with the use of medical devices intended to replace or modify anatomical structures, processes or physiological conditions deserves separate analysis. The scope of such procedures supports the claim that they should be performed by persons who have appropriate knowledge and skills. It is unclear whether procedures involving the supplementation or modification of anatomical structures can be performed by any physician regardless of their specialisation, or exclusively by physicians who have undergone 'specialist training in the procedures'. It is pointed out in the literature that the scope of procedures undertaken by physicians and dentists must correspond to their specialisation,[61] yet there are different views on the matter.[62]

Case law indicates that a physician's level of expertise is determined, *inter alia*, by specialisation, experience and qualifications. Providing medical services by someone who does not have specialist status is possible, but it is considered risky. If a physician undertakes such actions, they should ensure that they possess adequate knowledge and skills, inform patients of their status and, if in doubt, refer them to a specialist.[63] The District Courts in Słupsk, Poznań and Warsaw expressed similar views.[64]

In turn, the Supreme Court ruling of 21 April 2017, case No. SDI 4/17, emphasises that:

> 'In a situation where there are justified reasons, a physician may expand the scope of tests and perform them even in areas in which he is not a specialist. This should not be considered to be an excess of medical competence. (…) However, there must be credible reasons for expanding the tests, and the medical procedures must be performed with due care, and in accordance with the current state of medical knowledge. Above all, the patient must be informed of the need for these tests and give his consent to them.'

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[61] Z.B. Gądzik, 'Glosa do postanowienia Sądu Najwyższego z 26.05.2021 r., sygn. I KK 23/21', *Ius Novum*, 2022, No. 4, pp. 177–188.

[62] K. Zgryzek, in: Ogiegło L. (ed.), *Ustawa o zawodach lekarza i lekarza dentysty. Komentarz*, Warszawa, 2015, p. 555.

[63] See the Supreme Court judgment of 10 February 2010, case No. V CSK 287/09, LEX No. 786561.

[64] See judgment of the District Court in Słupsk of 25 April 2022, case No. I C 1061/19, https://orzeczenia.slupsk.so.gov.pl/ (accessed: 22 June 2025); judgment of the District Court in Poznań of 25 June 2021, case No. XIV C 1273/16, https://www.saos.org.pl/judgments/444709 (accessed: 22 June 2025); judgment of the District Court in Warsaw of 3 December 2020, case No. I C 960/15, https://orzeczenia.ms.gov.pl/details/$N/154505000000303_I_C_000960_2015_Uz_2020-12-23_001 (accessed: 22 June 2025).

The context of whether the person undertaking aesthetic procedures with the use of medical devices has received specialist training has not only theoretical but also practical significance, which results from the debate on the safety of medical devices. The Supreme Medical Council's position is that 'aesthetic procedures should only be performed by practitioners who have appropriate knowledge, skills and experience in performing them (…)'.[65] This position addresses general issues related to competences for performing aesthetic procedures. The phrase 'appropriate knowledge, skills and experience' refers only to the general rule that a physician owes a duty of care in the process of performing medical procedures.[66]

In accordance with the content of the specialisation curriculum in the field of plastic surgery, the programme of the specialist module in plastic surgery for physicians who do not have the appropriate first or second degree specialisation or the title of specialist in the relevant field of medicine states that:[67]

> 'The aim of specialist training in the specialist module is to acquire specific qualifications in the field of plastic surgery in the following scope: (…) aesthetic surgery (…) of (c) breasts: – implantation of breast prostheses, – sagging breasts, – inverted nipples, in compliance with modern medical knowledge.'

The content of the specialisation programme indicates that the aim of specialist training within the specialist module is also to acquire specific qualifications in the field of plastic surgery that enable, in compliance with modern medical knowledge, the provision of highly specialised medical and preventive services in the field of plastic, reconstructive and aesthetic surgery.

The literal wording of the specialist training programme clearly indicates that specialist competences acquired during plastic surgery specialisation are necessary for performing breast implant procedures, as well as when using flap techniques and tissue transplantation within the female breasts.[68] However, in many cases, plastic surgery specialisation is not required for the performance of procedures correcting anatomical structures. For example, gynaecologists may perform labiaplasty, hoodoplasty, hymenotomy or postpartum scar correction.[69] In addition

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[65] See https://nil.org.pl/dla-lekarzy/prawo/medycynaestetyczna/5296-propozycja-definicji-medycyny-estetycznej (accessed: 29 December 2023).

[66] The duty of care constitutes the basic duty for persons practising the profession of a physician and a dentist. In accordance with Article 4 APD, 'Physicians are obliged to practise the profession in compliance with the recommendations of modern medical knowledge, available methods of disease prevention, diagnosis and treatment, pursuant to the principles of professional ethics and the duty of care'.

[67] https://www.cmkp.edu.pl/wp-content/uploads/2023/03/0738-program-1-.pdf (accessed: 28 December 2023).

[68] M. Noszczyk, *Medycyna piękności*, Warszawa, 2016, p. 213; U. Kalina-Prasznic, *Wpływ zmian społecznych, gospodarczych i ustrojowych na system prawa*, Wrocław, 2018, p. 54.

[69] In accordance with the curriculum of specialisation in obstetrics and gynaecology for physicians who do not have an adequate specialist status (this applies to physicians who started specialist training as a result of the qualification procedure in spring 2023), practical skills in gynaecology include, *inter alia*, performing plastic surgery of the anterior and posterior vaginal wall and perineum. See https://www.cmkp.edu.pl/wp-content/uploads/2023/03/0724-program-1-.pdf (accessed: 23 September 2023).

to surgical techniques, aesthetic gynaecology treatments also use CO_2 and Nd:YAG lasers, focused ultrasound HIFU, radiofrequency, IPL, hyaluronic acid, fat and platelet-rich plasma, and lifting threads.

Procedures aimed at modifying and supplementing the anatomical structure not involving the implantation of breast prostheses, the use of flap techniques or tissue transplantation may be performed as part of medical procedures by persons who do not specialise in plastic surgery or general surgery. Modification or supplementation of anatomical structures within the female breasts is possible with the use of non-surgical techniques, including the administration of preparations classified as medical devices, for example the modification of anatomical structures within the breast based on the medical device Aquafilling withdrawn from the market (later called Los Deline), which is classified as a Class III medical device.[70]

In the ruling of 26 May 2021, case No. I KK 23/21,[71] the Supreme Court expressed its opinion on the advisability of performing 'breast augmentation' procedures with the use of Aquafilling B by dentists. The Court emphasised that the guidelines for Aquafilling explicitly stated that only specialists who have relevant certificates and the necessary qualifications could administer it.

In accordance with the regulations in force, i.e. Article 2(2) APD, a dentist's area of practice includes the teeth, facial skeleton and adjacent areas. Given this limitation, a dentist is not qualified to operate outside this area. It is worth emphasising that the Aquafilling preparation, before its withdrawal from sale and use due to serious complications resulting from its application and due to the risk to the health and life of patients, was available in two versions: Aquafilling F (intended for use on the face) and Aquafilling B, used for 'filling' breasts and other body parts. The Supreme Court's ruling that breast augmentation procedures with the use of Aquafilling B cannot be performed by a dentist resulted from the need to perform a number of pre-procedural as well as post-procedural measures aimed at reducing health risks. The Supreme Court pointed out that prior to the Aquafilling procedure, a patient must undergo a series of tests: a complete blood count, AIDS, HBs Ag, WR test, an ECG, a blood clotting test, a urine test, as well as a breast USG or mammogram. The list of contraindications to the administration of this medical device is also extensive. Furthermore, the Supreme Court emphasised that breast augmentation with the use of the aforementioned preparation falls within the statutory definition of a health service due to its invasive nature and the requirements for its performance. At the same time, the Court emphasised that it expressed this position in full awareness of the lack of precise legal regulations regarding the performance of the so-called non-therapeutic aesthetic medicine procedures, and that the area in question requires urgent legislative intervention.

In conclusion, it should be emphasised that only physicians have the competence to perform procedures involving the administration of preparations supplementing

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70 '(…) Surgical invasive medical devices intended for short-term use are classified as Class IIa; however, they are classified as Class IIIa when they are intended (…) to produce biological effects or to be absorbed in whole or in part.' See Regulation of the Minister of Health on the method of classifying medical devices of 5 November 2010, Journal of Laws of 2010, No. 215, item 1416.

71 Supreme Court ruling of 26 May 2021, case No. I KK 23/21, LEX No. 3229514.

anatomical structures, and it is irrelevant whether they have completed specialisation in performing surgical procedures or are not specialists at all in the strict sense.

It should be noted, in this context, that the administration of a medical device to modify anatomical structures is a very common practice in aesthetic procedures, for example procedures aimed at performing facial volumetry, which involves the administration of a preparation (a medical device) without the use of surgical instruments, such as a cannula. Procedures to modify anatomical structures in the facial area are currently very common and are generally not associated with invasive procedures; however, this does not exclude the risk of adverse events. The lack of clear legal regulations, as well as the inappropriateness of using disruption of the epidermal barrier as a variable defining the list of persons authorised to perform specific types of procedures, means that aesthetic services involving the violation of bodily integrity and penetration into the human body can be performed, due to their non-therapeutic nature, not only by persons practising medical professions.

CONCLUSIONS

The legal regulations in force, the doctrine and case law[72] do not indicate the classification of aesthetic activities, treatments and services within the category of healthcare services. The ambiguity of the nature of aesthetic services led the Supreme Medical Council to submit a proposal to amend the definition of healthcare services, in accordance with which healthcare services should be understood as:

> 'Actions aimed at preserving, saving, restoring or improving health, and other medical activities resulting from a treatment process, or separate provisions regulating the principles of their performance, as well as actions aimed at restoring or improving the physical or mental well-being and social functioning of a patient by means of changing their appearance, involving intervention in human tissue'.[73]

The change of the definition would allow aesthetic services to be classified as part of the catalogue of healthcare services, which would also eliminate controversies over the eligibility to perform them.

However, it is necessary to point out that the concept of a healthcare service defined in Article 3(1)(10) of the Act on Therapeutic Activities[74] has not been

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[72] See, *inter alia*, the judgement of the Voivodeship Administrative Court in Warsaw of 30.05.2016, case No. VII SA/Wa 385/16, LEX no. 2113957; the ruling of the Supreme Administrative Court of 19.12.2012, case No. I FSK 259/12, https://inforfk.pl/dok/tresc,NSA.2012.001.100583144,Wyrok-NSA-z-dnia-20-grudnia-2012-r-sygn-II-FSK-764-11.html; the Supreme Court ruling of 26.05.2021, case No. I KK 23/21, https://www.sn.pl/sites/orzecznictwo/orzeczenia3/i%20kk%2023-21.pdf

[73] See D. Lesner, 'Medycyna estetyczna czeka na swoje prawo, a kontrowersji dużo', *Prawo.pl*, 20 March 2021; https://www.prawo.pl/zdrowie/medycyna-estetycznabeda-zmiany-w-prawie-ale-kontrowersji-duzo,507050.html (accessed: 8 December 2023).

[74] Act on Therapeutic Activities of 15 April 2011, consolidated text, Journal of Laws of 2025, item 450.

amended to date and therefore does not include elements concerning a change or modification of external appearance.

Regardless of the above, it is necessary to standardise the nomenclature of aesthetic services, procedures, invasive procedures and high-risk procedures. At the same time, it seems essential to clearly define which procedures can only be performed by persons practising medical professions and authorised to provide healthcare services, and which, due to their purpose, can be performed by persons who have acquired practical skills and qualifications that do not stem from traditional healthcare education.

An attempt to define the competences necessary to provide aesthetic and restorative medicine services in more detail was undertaken in the Regulation of the Minister of Health on the professional skills of physicians and dentists (hereinafter referred to as 'the RPSPD').[75] The aforementioned Regulation specifies the types and codes of professional skills in which physicians and dentists can obtain certificates of professional competence. The Regulation refers to 'aesthetic and restorative medicine' and 'lifestyle medicine'. Applying for a certificate of professional competence in the former area is possible for all persons licensed to practise medicine regardless of their specialisation, as well as those who have not completed any specialist training. A literal and teleological interpretation of the provisions of the RPSPD allows for the assumption that the qualifications necessary to perform aesthetic and restorative medicine procedures can be acquired by any physician or dentist regardless of their level of postgraduate training. However, this does not resolve issues related to determining which aesthetic procedures can be performed exclusively by physicians, nor does it define the concept of aesthetic services. Furthermore, the introduction of the term 'aesthetic and restorative medicine' suggests expanding the catalogue of procedures aimed at improving appearance to include reconstructive procedures, which are generally the domain of specialists.

Contrary to opinions common in the medical community, the Regulation does not prohibit the performance of aesthetic procedures by persons other than physicians, including those who are not directly involved in healthcare, but aims to unify the sources of knowledge and skills acquired by physicians and dentists in the field of services related to aesthetic and restorative procedures.

The issue of defining the concept of aesthetic services, clearly specifying the qualifications necessary to perform them, and establishing simple rules of responsibility for performing activities that require the use of strictly defined formal qualifications remains open. The lack of consistent and unambiguous legal regulations not only increases the risk for persons undergoing aesthetic procedures, but also results in an unregulated market and the syncretisation of services that, although associated with the possibility of significant risk, can currently be provided not only as healthcare services for patients but also as services for consumers.

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[75] Regulation of the Minister of Health of 13 June 2023 on professional skills of physicians and dentists, Journal of Laws of 2023, item 1189.

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