



Evaluation of medical malpractice claims arising from minimally invasive cosmetic procedures in the context of supreme court decisions

Minimal invaziv kozmetik işlemlerden kaynaklanan tıbbi uygulama hatası iddialarının yüksek yargı kararları çerçevesinde değerlendirilmesi

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Abstract

Background and Design: This study aims to evaluate the significance of physicians' obligations under contracts of work in the context of medical malpractice claims related to minimally invasive cosmetic procedures. Additionally, it will address the criteria and methodologies employed in the legal assessment of disputes arising from these procedures, particularly in light of the recent rulings by Supreme Courts. Furthermore, it will emphasize the key considerations from a forensic medical perspective.

Materials and Methods: The results of the search conducted using the keywords "botox, aesthetics", "filling, aesthetics", "laser, epilation", "laser, aesthetics", "laser rejuvenation", "peeling", "derma pen", "mesotherapy", "platelet-rich plasma", and "hair transplantation" from the "https://legalbank.net/arama/mahkeme-kararlari" website revealed that all decisions on medical malpractice as a result of dermatological aesthetic procedures were included in the study. The characteristics of the procedure, the resulting damage, and the trial court and supreme court decisions were evaluated.

Results: Seventy-four decisions that met the pre-established screening criteria were identified. Most decisions (83.8%, n=62) were related to laser epilation procedures. The findings revealed that the most frequent locations for the procedures were beauty centers and beauty salons, representing 58.1% of the cases. It was determined that 78.3% (n=58) of the judgments were reversed. Among the reasons for reversal, deficiencies in expert reports were noteworthy.

Conclusion: A review of medical malpractice claims has revealed that most dermatological aesthetic procedures and laser epilation applications are associated with beauty centers. The decisions of the supreme courts emphasize the importance of the practitioner's authority, the obligation to inform, the management of complications, and whether the contract of work and the supervision and control responsibility of the responsible manager achieved the promised result.

Keywords: Cosmetic procedures, filling, botox, epilation, malpractice

Öz

Amaç: Bu çalışmada son zamanlarda artan minimal invaziv kozmetik uygulamaların beraberinde getirdiği tıbbi uygulama hatası iddiaları ve bu yöndeki davalarda görülen artış ile gündeme gelen hekimlerin eser sözleşmesinden doğan sorumluluklarının önemi vurgulanarak, Yüksek Yargı Mahkemelerinin kararları doğrultusunda bu uygulamalardan doğan anlaşmazlıkların hukuki açıdan değerlendirilme kistas ve yöntemlerinin tartışılması ve bu konuda adli tıbbi açıdan dikkat edilecek hususların vurgulanması amaçlanmıştır.

Gereç ve Yöntem: "https://legalbank.net/arama/mahkeme-kararlari" adresinden "botoks, estetik", "dolgu, estetik" "lazer, epilasyon" "lazer, estetik", "lazerle gençleştirme", "lazer rejuvenasyon", "peeling", "dermapen", "mezoterapi", "platelet rich plasma", "saç ekimi" anahtar kelimeleri kullanılarak yapılan tarama sonucunda dermatolojik estetik işlemler sonucu tıbbi uygulama hatasını konu edinen kararların tümü çalışmaya dahil edilmiştir. Kararlarda yer alan; uygulanan işlemin özelliği, ortaya çıkan zarar, ilk ve son mahkeme kararları medikolegal açıdan değerlendirilmiştir.

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Bulgular: Tarama kriterlerini karşılayan 74 karara ulaşılmıştır. Kararların büyük çoğunluğu (%83,8, n=62) lazer epilasyon uygulamalarını konu edinmekteydi. Çalışmaya dahil edilen kararlara konu uygulamaların en sık yapıldığı yerlerin güzellik merkezleri ve güzellik salonları (%58,1) olduğu, kararların %78,3'ünün (n=58) üst derece mahkemeleri tarafından bozulduğu, %21,6'sının ise onandığı tespit edilmiştir. Bozma nedenleri arasında bilirkişi raporlarındaki eksiklikler dikkati çekmiştir.

Sonuç: Dermatolojik estetik işlemler içinde en sık karşılaşılan tıbbi uygulama hatası iddialarının, uygulama yeri olarak güzellik merkezlerinde ve işlem olarak da lazer epilasyon uygulamalarında görüldüğü saptanmıştır. Üst derece mahkemelerinin kararlarında; uygulayıcının yetkisi, aydınlatma yükümlülüğünü yerine getirip getirmediği, komplikasyon yönetimi, eser sözleşmesi gereği taahhüt edilen sonucu gerçekleştirip gerçekleştirmediği, mesul müdürün gözetim ve denetim sorumluluğu gibi hususların üzerinde durulduğu görülmektedir.

Anahtar Kelimeler: Kozmetik işlemler, dolgu, botoks, epilasyon, malpraktis

Introduction

In recent years, numerous new therapeutic approaches have emerged in aesthetic dermatology to reduce the signs of aging and change the body's appearance. Today, anti-aging treatment requires a multifaceted approach to mitigate age-related changes. For these purposes, procedures such as botulinum toxin (botox), various fillers, chemical peels, and laser applications are among the most commonly used non-operative aesthetic applications¹.

The American Society of Dermatological Surgery reported that in 2019, compared to 2012, wrinkle removal procedures increased by 60%, various filling procedures by 78%, laser and light-based procedures by 106%, and the total number of procedures reached approximately 9.1 million². The increasing frequency of minimally invasive cosmetic procedures, together with the increase in the number of physicians and non-physicians performing these procedures, brings with it an increase in complications, medical malpractice claims, and lawsuits related to these procedures³⁻⁵.

The responsibilities of a physician resulting from faulty medical intervention can be categorized into three main groups as follows:

1. Criminal responsibility,
2. Responsibility for compensation,
3. Administrative responsibility.

Criminal responsibility is a process that may address the defects encountered during medical interventions under the criminal law applicable in our country. This subject matter may be investigated by the Public Prosecutor's Offices and prosecuted by the Criminal Courts. Consequently, it is a process that determines whether the physician will face any form of punishment. For civil servant physicians to be subjected to this process, they must first undergo a criminal investigation by their respective institutions. In fact, the physician's medical intervention is an act like a violation of bodily integrity. However, this physician intervention is legitimized by the patient's informed consent, the fact that the person performing the medical intervention is authorized in this regard, and the fact that the intervention is necessary and appropriate according to medical science data. The lack of one or more of these elements will lead to criminal liability.

The civil law liability of the physician arising from the medical intervention and the related compensation liability arising therefrom are in question if the patient is harmed as a result of the unlawful medical intervention of the physician, and the aim here is to compensate the losses of the injured party by those responsible⁶⁻⁸. The source of the compensation liability of healthcare personnel due to medical malpractice is mainly based on tort, breach of contract, or unauthorized work. The issue of which situations the compensation lawsuit will be filed based on is closely related to many parameters, such as where the physician works, the action, and whether there is a contract between the patient and the physician. In interventions on the patient's bodily integrity, any damaging behavior

contrary to the contract also constitutes a tort. For the physician to be liable for the contract and tort, he/she must also be at fault; that is, the necessary care must not have been taken to prevent the damage⁶⁻⁸.

Administrative responsibility refers to the physician's obligation to the organization that employs them. In this context, disciplinary penalties are imposed on public employees who "demonstrate behaviors contrary to the established rules" for properly executing public service within the limits set by legislation.

In legal terms, the relationship between the physician and the patient during medical intervention is contractual. According to the Turkish Code of Obligations, a contract of work is defined as an agreement in which the contractor commits to creating a work while the owner agrees to pay a price in return. In a power of attorney contract, the physician, acting as the proxy, is not liable for failing to achieve the desired outcome while performing medical duties. However, the physician is responsible for any damages resulting from a lack of diligence in their efforts, transactions, actions, and behaviors to achieve this result⁹. The distinguishing difference between these two contracts is the result guarantee in the work contract. In the doctrine and mainly in the decisions of the Supreme Court, the treatment contract based on aesthetic medical interventions that do not aim at physical treatment is accepted as a contract of work¹⁰.

In our country, the legal regulation regarding the centers where minimally invasive cosmetic applications such as fillers, botox, and laser hair removal will be performed was first made in the "Regulation on Beauty and Aesthetic Purpose Health Institutions" published in the Official Gazette dated 12.05.2003. With this regulation, beauty centers and beauty salons are given the status of health institutions. In addition, beauticians with a certificate of mastership can open beauty salons, which allows them to perform many applications. Therefore, this regulation was repealed by the provisions of the "Regulation on Private Health Institutions for Outpatient Diagnosis and Treatment" dated 15.12.2008 and numbered 26788. With the amendment published in the Official Gazette dated 16.01.2024 and numbered 32431 in this regulation, aesthetic health services within the medical centers, outpatient clinics, and practices may be provided by dermatologists and venereologists; plastic, reconstructive, and aesthetic surgeons; and physicians with medical aesthetic certificates approved by the ministry within the scope of their training curricula and competencies acquired with certificates and within the framework of medical practices permitted in the health institution where they are located. Regulation on "Amendments to the Regulation on Workplace Opening and Operation Licenses," published in the Official Gazette dated 25.07.2010 and numbered 27652, regulates the applications that beauticians can perform and those they are prohibited from performing. Therefore, beauticians are not permitted to perform specific procedures that require physician knowledge and responsibility, such as acupuncture, mesotherapy,

methods that require intervention with injections into the skin, or subcutaneous injection¹¹⁻¹³.

Today, the rise in medical malpractice claims related to aesthetic procedures and the growing number of lawsuits in this area have once again highlighted the significance of physicians' responsibilities stemming from their employment contracts. This study aims to discuss the criteria and methods for the legal evaluation of disputes arising from minimally invasive cosmetic procedures, such as fillers, botox, and laser hair removal, in light of Supreme Court decisions while emphasizing the issues to be considered from a forensic medical perspective.

Materials and Methods

The Supreme Court's decisions are published on their website, "karararama.yargitay.gov.tr". On the other hand, private decision search engines such as Legalbank or Lexpera utilize the Supreme Court database and present the compiled data to their users. The databases of these three sites are standard and provide the same search results. In our study, the "https://legalbank.net/arama/mahkeme-kararlari" address was searched in the Turkish language for the keywords "Botox, aesthetics," "filling, aesthetics," "laser, epilation," "laser, aesthetics," "laser rejuvenation," "peeling," "derma pen," "mesotherapy," "platelet-rich plasma," and "hair transplantation" keywords between 04.04.2024 and 10.04.2024. In our study, there is no time limitation on the decision date. All decisions published until today have been included. The nature of the procedure, the damage caused, and the reasoned judgments of the first and last courts were evaluated.

This study was conducted in accordance with the principles of the Declaration of Helsinki and received approval from the Pamukkale University Non-Interventional Clinical Research Ethics Committee (approval number: 07, date: 02.04.2024).

Results

As a result of the search, 74 decisions matching the search criteria were found. The oldest decision was made in 2007, and most were made in 2019 (Figure 1). It was observed that 51.4% (n=38) of the local courts were civil courts, and 48.6% (n=36) were criminal courts. While 97.3% (n=72) of the upper instance courts were composed of the Supreme Court, only two decisions belonged to the Regional Courts of Appeal. No decision of the Council of State meeting the search criteria was found. Most decisions (83.8%, n=62) were about laser hair removal applications (Table 1). It was determined that beauty centers and

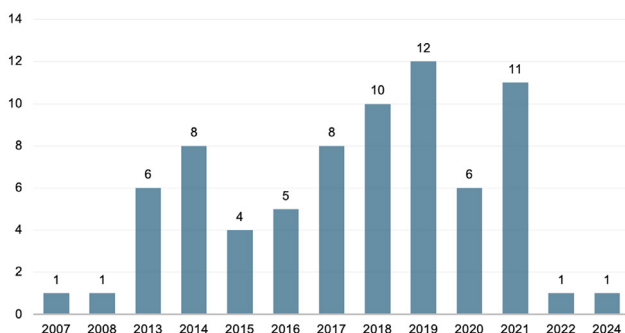


Figure 1. Distribution of higher court decisions by year

salons (58.1%) were the most common places where the applications mentioned in the decisions included in the study (Table 2). The most common location of the lesions was the lower extremities, followed by the face and upper extremities (Figure 2).

Of the 74 local court judgments included in the study, 77% (n=57) were reversed, and 23% (n=17) were approved by higher courts (Table 3). It was observed that the most common reasons for reversal in civil court decisions were based on jurisdiction and deficiencies in expert reports. In the criminal courts' decisions, the most common rationale for reversal was that the judgment was rendered without investigating the authority of the defendant who applied the procedure and the deficiencies in the expert reports. When the contents of the decisions are analyzed, the judgments rendered by local and higher courts are presented in Table 3. In 9 of the 11 acquittal verdicts approved by the criminal chambers of the higher courts, there was an expert report indicating that the defendant was authorized, the resulting medical condition was a complication, and the defendant was not at fault. In the other two verdicts, an expert report stated that a causal link between the damage caused and the incident could not be established. In one decision where the conviction was approved, it was noted that the decision was maintained because the defendant lacked an authorization certificate. When analyzing the decisions of local civil courts approved by higher courts, it is observed that the local court rejected three of them on jurisdictional grounds, one decision mandated that the defendant pay compensation, and one decision dismissed the case on the merits. However, detailed information on the contents of the file was not provided.

When the expert reports that the higher courts did not accept are analyzed, it becomes evident that the primary reason is the inadequacy

Table 1. Distribution of minimally invasive cosmetic procedures subject to higher court rulings

	n (%)
Epilation	62 (83.8)
Botox	1 (1.4)
Filling	1 (1.4)
Peeling	3 (4.1)
Laser	1 (1.4)
Solarium	1 (1.4)
Hair transplantation	5 (6.8)
Total	74 (100)

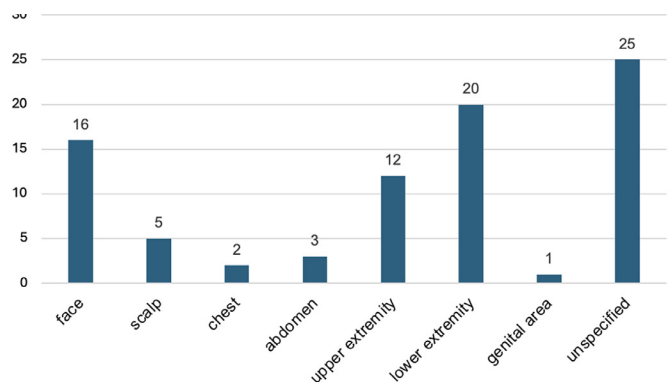


Figure 2. Distribution of lesions resulting from minimally invasive cosmetic procedures

in assessing the fault status of the applicant. Additionally, contradictions between the two expert reports and the failure to evaluate the obligation to clarify were other reasons for the reversal. Furthermore, in some reasoned decisions of the Supreme Court, it was emphasized that an expert report should be obtained from a three-person committee, including a dermatology specialist.

Discussion

According to the data published by the American Society of Dermatological Surgery in 2019, wrinkle removal and laser and light-based procedures are performed almost equally. Despite this, it is reported in the literature that medical malpractice claims are more common after laser applications^{2,5,14-16}. Snapp et al.¹⁴ reported that 94% of the cases were related to laser epilation, 11.7% to dermal filler injection, and 1.4% to botox application in their study examining medical malpractice claims after non-surgical aesthetic procedures. Hibler et al.⁵ reported that 41.6% (n=5) of 12 lawsuits were related to

medical malpractice cases arising from laser hair removal in their study examining lawsuits arising from minimally invasive cosmetic procedures. Yalcin Balcik and Cakmak¹⁵ in their study on medical malpractice arising from all surgical and non-surgical aesthetic procedures, stated that the most common case was laser hair removal with 30.9%. In our study, 83.8% (n=62) of our cases consisted of medical malpractice claims that developed during epilation application, and our findings were consistent with the literature.

Our study observed that medical malpractice claims were mainly made in personal care establishments known as beauty centers and salons (58.1%). However, laser hair removal is a technical procedure that should be performed by a healthcare professional trained in dermatology and laser-specific techniques^{17,18}. The occurrence of side effects from laser hair removal is more frequent in procedures conducted by untrained personnel^{18,19}. However, in our country, the relevant regulation allows persons other than healthcare professionals to perform laser hair removal provided that they have the necessary qualification documents¹³. However, laser hair removal and other aesthetic procedures are aesthetic medical interventions applied to ensure complete biopsychosocial well-being within the definition of health^{10,20}. Complications arising from these procedures, if not appropriately managed, can lead to lasting consequences^{18,21}. We believe specialized physicians should perform aesthetic procedures to prevent damage and victimization.

For a medical intervention to be considered medical malpractice, it must first be assessed whether the practitioner has the authority to perform the procedure¹⁶. Establishments providing services in the field of beauty and aesthetics in our country are divided into beauty salons, where more straightforward (non-medical) aesthetic procedures can be performed, and medical centers, outpatient clinics, and practices where procedures requiring physician knowledge, skills, and experience can also be performed. Within the scope of the "Regulation on Private

Table 2. Distribution of centers where minimally invasive cosmetic procedures are performed

	n (%)
Beauty center/salon	43 (58.1)
Private outpatient clinic	4 (5.4)
Private hospital	3 (4.1)
Private medical center	4 (5.4)
Unspecified	15 (20.3)
Hair transplant center	3 (4.1)
Other*	2 (2.7)
Total	74 (100)

*Solarium center and tattoo parlor

Table 3. Local court/prosecutor's office and higher court decisions

Local court	Higher court decisions	Approved decision	Reason for reversal	n	%	
Criminal courts	Approval	Acquittal		11	30.5	
		Conviction		1	2.8	
	Reversal		An expert report should be obtained		9	25.0
			Authority investigation should be done		9	25.0
			The penalty should be recalculated		1	2.8
			A conviction must be given		2	5.6
			Audit duty should be investigated		2	5.6
			Other		1	2.8
Total			36	100.0		
Civil courts	Approval	Dismissal of the case		4	10.5	
		Compensation		1	2.6	
	Reversal		An expert report should be obtained		13	34.2
			Disruption in terms of duty		10	26.3
			Compensation should be recalculated		4	10.5
			Reversal in favor of the plaintiff		3	7.8
			Reversal in favor of the defendant		1	2.6
			Other		2	5.2
Total			38	100.0		

Health Institutions for Outpatient Diagnosis and Treatment”, it is stated that “provided that the necessary physical space and minimum medical equipment defined for the outpatient clinic are provided, within the medical centers, outpatient clinics and practices within the medical centers; dermatovenereologists; plastic, reconstructive and aesthetic surgeons and physicians with a medical aesthetic certificate approved by the ministry can provide aesthetic health services within the framework of medical practices permitted in the health institution within the scope of their training curriculum and competencies acquired with the certificate”. According to provisional article 5 of the same regulation, even if a person with a medical faculty diploma works in a beauty salon, it is prohibited to perform medical procedures authorized by a physician in the beauty salon.

In the “Regulation on Business Opening and Working Licenses,” the regulation on beauty salons was first made within the scope of the “Regulation Amending the Regulation on Business Opening and Working Licenses” numbered 2010/671, which entered into force after being published in the official gazette on 25.07.2010, and the conditions that must be present in beauty salons and their employees were determined. According to the first version of the regulation, hair removal and depilation procedures can only be performed in beauty salons using methods other than laser and photoepilation applications. Still, with the amendments made on 06.12.2012 and 30.03.2017, the scope of hair removal and depilation procedures that can be performed in beauty salons has been expanded. Photoepilation procedures have been made possible. However, photoepilation is an application that must be performed under the supervision of a physician, which may have complications such as scar formation, first-degree burns, and hyper-hypopigmentation²⁰. The 10th Chamber of the Council of State reasoned decision numbered 2020/4821 stated that “... the provision of a health service that can only be provided by physicians in medical centers, in a hospital environment, by people without any medical qualifications in beauty salons with devices that cannot be distinguished between medical and non-medical may cause serious health problems; the sense of trust of people in such workplaces may be abused; laser hair removal, photoepilation, herbal or chemical peeling applications for skin care and support, which are considered aesthetic health services, can already be performed by dermatology or plastic, reconstructive and aesthetic surgery specialist physicians through outpatient services; it is unclear which devices can be used in beauty centers; in addition, in the regulation subject to the lawsuit, there is not even a detailed regulation on whether the intense pulsed light (IPL) device is used by beauticians without activating the medical device feature and how other issues will be inspected and what sanctions will be applied in case of detection of these issues...” and canceled the articles regarding photoepilation procedures that can be performed in beauty salons²². However, with the amendments published in the Official Gazette dated 25.08.2022 and numbered 31934, the hair removal procedures that can be performed in beauty salons have been reorganized with the phrase “Hair removal and depilation procedures to be performed with IPL in the 600-1200 nanometer wave range for hair removal applications and serial pulsed diode laser equipment that does not exceed 20 j/cm² energy limit produced solely for hair removal indication”. With this amendment, the regulation, which previously allowed only hair removal methods other than photo and laser hair removal, has evolved to permit photo and laser hair removal in beauty salons, requiring that these procedures be performed by specialist physicians who possess the

knowledge and license to manage complications such as burns, scars, and hypo-hyperpigmentation that may arise²⁰. The studies emphasize that these applications should be performed by specialists such as plastic and reconstructive surgery and dermatology specialists. It is reported that approximately 30% of complications such as burns, scars, hypo-hyperpigmentation, and infections caused by incorrect parameter selection are caused by practitioners other than medical personnel. This rate decreases to 0.24% in the applications of trained dermatologists²³⁻²⁷. Jalian et al.²⁸ reported that the rate of lawsuits filed against non-physician practitioners increased from 36.3% to 77.8% between 2008-2011.

In addition to these discussions, the relevant regulation requires beauticians to have a certificate of mastership in the relevant field or a diploma showing that they have graduated from the relevant fields of associate degree or bachelor’s degree or vocational or technical secondary education institutions or at least a fourth level course completion certificate or at least a fourth level vocational qualification certificate or a certificate obtained from educational institutions abroad and whose equivalence is accepted according to the relevant legislation. Beauticians are held responsible with the responsible manager for the applications they are authorized for and the complications that may arise from them. Even if a graduate of a medical faculty works in a beauty salon, it is prohibited to perform all kinds of invasive interventions such as mesotherapy, acupuncture, lipoelectro, procedures requiring intervention by injection into the skin or subcutaneous injection, chemical and herbal peeling applications by using alpha hydroxy acids and derivatives above 30% superficially for skin care and support, mechanical peeling for skin care and support, and medical procedures under the authority of a physician¹³. In light of all this information, in the decisions of the Supreme Court, it is emphasized that for the medical practice resulting in damage to be accepted as medical malpractice, it is necessary first to determine whether the practitioner has the authorization certificate and the authority to perform the procedure in accordance with the relevant regulations. In this context, it is seen that the Supreme Court reversed nine first-instance court decisions and approved one conviction decision due to a lack of an authorization certificate.

In its decisions, the Supreme Court stated that in these applications concerning the contract of work, the expert reports should give an opinion on whether the contractor has fulfilled all the requirements to prevent the plaintiff from being damaged, whether it has taken the measures required by the concrete situation in full, whether it has determined the appropriate course of action, whether it has fully fulfilled its obligation to inform the business owner, whether it has delivered the work by the purpose expected by the plaintiff, and whether it has achieved the promised result (here, the term “contractor” refers to the person performing the procedure, and the term “business owner” refers to the patient to whom the procedure is applied). In the event of deficiencies in one or more of these issues in the expert reports, it is seen that the Supreme Court overturns the decisions based on this report. In our study, it has been observed that the most common deficiency in expert reports is that they do not contain an opinion on the defendant’s fault and generally only state whether the medical condition is a complication or not.

The liability arising from the oversight of private health institutions may also be in question. In its rulings, the Supreme Court emphasized that the responsibility of the individual performing the procedure and the supervisory and control responsibilities of the accountable manager

should be assessed. Article 16(6) of the Regulation on Private Health Institutions for Outpatient Diagnosis and Treatment states that "... the managing director is personally responsible for administrative affairs and jointly responsible for medical procedures with other physicians"^{12,29}.

Conclusion

Consequently, our study found that the most frequent medical malpractice claims related to dermatological aesthetic procedures occur in beauty centers, specifically involving laser hair removal treatments. In the decisions of the courts of higher instance, it is seen that issues such as the authority of the practitioner, whether they fulfill the obligation to inform, complication management, whether he realizes the result promised under the contract of work, and the supervision and supervision responsibility of the responsible manager are emphasized. In addition, the Supreme Court has noted that experts should be consulted for situations requiring special or technical knowledge and that experts should evaluate these issues and give an opinion. In light of all this information, the authors of this study think that it is not appropriate to apply health services, which can only be applied to the human body by physicians, in some centers, regardless of their name, where physicians who are experts in the field are not employed, and that it would be correct to revise and update the legal regulations on this subject in this direction.

Ethics

Ethics Committee Approval: The study was approved by the Ethics Committee of the Pamukkale University Non-Interventional Clinical Research (approval number: 07, date: 02.04.2024).

Informed Consent: Not applicable.

Footnotes

Authorship Contributions

Concept: A.K.D., Design: A.K.D., A.İ., H.C., B.Ş., K.A., Data Collection or Processing: A.İ., Analysis or Interpretation: A.K.D., A.İ., H.C., B.Ş., K.A., Literature Search: A.İ., B.Ş., K.A., Writing: A.K.D., A.İ., K.A.

Conflict of Interest: The authors declared that they have no conflict of interest.

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