

Fat-burning injections – medical information from beauticians

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A recent Supreme Court decision has shown that the search for beauty and the perfect shape is sometimes dangerous and painful.

Facts

A client sued her beautician because of an unsuccessful fat-burning injection treatment. The beautician had told the client that she was not allowed to carry out this treatment because she lacked sufficient medical knowledge. Nonetheless, she considered herself skilled enough to carry out this treatment, because she had already applied it both to herself and other clients.

The beautician had previously assisted a general practitioner who also carried out beauty treatments. She explained to the plaintiff that such treatments may cause swelling, blue discoloration and some pain. No further explanations were provided – in particular, the beautician failed to mention that the product was not admitted by the manufacturer for this type of treatment and that adverse effects (eg, abscesses, cicatrices, skin irregularities, nerve irritation, inflammation and strong localised skin and fat necrosis) could occur. Had the patient received sufficient medical information, she would not have consented to the treatment.

During the treatment, the plaintiff suffered pain, her thighs turned blue and she developed inflammation which resulted in scars. Her tissue was slack and uneven. The plaintiff sued for pain and suffering.

The defendant claimed that she had informed the plaintiff of her lack of medical knowledge and that the plaintiff had nevertheless consented to the treatment to save the cost of being treated by a physician. She also argued that she had provided sufficient medical information to the plaintiff.

Decisions

The first-instance court⁽¹⁾ granted the plaintiff two-thirds of her claim. The court held that the defendant had had the same obligation as a physician to provide medical information on the risks and complications. In the absence of sufficient information, the plaintiff's consent to the treatment would be invalid and the defendant would therefore be liable for the resulting damages. However, as the plaintiff had been aware of the defendant's inexperience, she was responsible for the contributory fault, which reduced her claim by one-third.

Following the plaintiff's appeal, the appellate court⁽²⁾ confirmed the first-instance decision. According to the appellate court, a non-physician who carries out a medical treatment must inform the patient of his or her lack of qualifications. The defendant had complied with this obligation. As a non-physician, the defendant was not obliged to provide medical information. Since the defendant had indicated that she lacked the required skills and the plaintiff nevertheless requested her services, the plaintiff had no compensation claim.⁽³⁾

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The Supreme Court accepted the plaintiff's appeal against this decision but dismissed it on the merits.
(4)

According to the court, the defendant had provided a treatment to the plaintiff by giving her an injection, which was considered an intrusion into the plaintiff's physical integrity. In general, anyone who provides a medical service without consent is viewed to have committed illicit bodily harm, regardless of whether such service was provided in accordance with medical science. Therefore, a physician is responsible for any adverse effects if a treatment is given without consent or sufficient information, even if there is no malpractice. The purpose of providing medical information is to provide patients with all relevant criteria for them to decide on whether to provide their consent and any possible consequences therein.

The Supreme Court shared the appellate court's view that a non-physician who carries out a medical treatment must inform the patient of his or her lack of medical qualification; otherwise, any consent to the treatment is invalid. However, this does not mean that advising the patient of a lack of medical qualifications shifts the risk of improper performance to the patient; this can be assumed only where the patient was informed of a lack of the skills required to provide the treatment.

In the case at hand, the defendant had indicated that she lacked the necessary medical qualifications but stressed that she had the necessary knowledge and skills to perform the treatment. Anyone who undertakes to perform a treatment which requires specific skills and experience is declaring that they trust themselves to provide these services. The defendant had declared that she possessed the necessary skills and she was therefore responsible for their absence.

A person who knows that the service provider is inexperienced must accept contributory fault. The plaintiff was aware that the treatment required medical knowledge that the defendant did not have. She also knew that the treatment required a physical intrusion (15 injections into each thigh). Although injections are sometimes made by laypersons, they are usually applied under medical supervision. The plaintiff therefore should have been aware that the defendant, as a beautician, did not possess the necessary skills to provide such a treatment. Since the plaintiff nevertheless consented to the treatment, she was responsible for the contributing fault.

Comment

The Supreme Court decision was diplomatic. Whereas the plaintiff was responsible for one-third of the damage because of her contributing fault, the rest was attributed to the beautician, who had undertaken the treatment despite lacking the necessary skills and failing to inform her client properly.

For further information on this topic please contact [Rainer Herzig](#) at Preslmayr Attorneys at Law by telephone (+43 1 533 16 95) or email (herzig@preslmayr.at). The Preslmayr Attorneys at Law website can be accessed at www.preslmayr.at.

Endnotes

(1) Higher Regional Court for Civil Matters Vienna, April 7 2017, 62 Cg 62/13p.

(2) Appellate Court Vienna, June 22 2017, 16 R 86/17k.

(3) Austrian procedural law prohibits a *reformatio in peius* to the detriment of the appellant. Since only the plaintiff appealed, the court did not dismiss two-thirds of the claim adjudicated in the first instance.

(4) Supreme Court, September 27 2017, 9 Ob 49/17x.