

# On the Systematic Development of Public Interest Litigation Against Overmedicalization

ZENG Tiantian

Northwest Normal University, Lanzhou, China

Due to its systemic and covert nature, excessive medical treatment not only infringes upon individual patients' property and health rights but also poses a continuous threat to the security of medical insurance funds, the order of the healthcare industry, and public trust in healthcare. Given its distinct public interest attributes, and the fraudulent nature of the excessive practices themselves, pursuing the path of public interest litigation holds significant importance. The judicial practice of China first civil public interest litigation case involving excessive medical treatment was achieved through the framework of consumer fraud; however, its reliance on the Consumer Rights Protection Law has exposed a dual dilemma of weak legal foundations and limited scope of application, particularly given that pharmaceuticals or medical treatments differ from commodities, and patients are not equivalent to consumers. An interpretive analysis of certain provisions in the current Basic Healthcare and Health Promotion Law and the Physicians Law can establish the regulatory framework for public interest litigation regarding excessive medical treatment; however, insufficient legislative provisions and a lack of practical precedents mean that such litigation in China remains in a state of legal vacuum. Against the backdrop of the Law on Public Interest Litigation by the procuratorate being included in the legislative agenda, the systematic development of public interest litigation regarding overtreatment should focus on four key dimensions: Regarding litigation subjects, a dual-track framework should be established, with procuratorial organs taking the lead and social organizations acting in coordination; regarding grounds for filing, the violation of medical treatment standards should serve as the core criterion, supplemented by quantitative standards for assessing harm to the public interest; in procedural aspects, a rule system should be established based on the principles of intermediate court jurisdiction, public notice and registration, and trial by a collegiate bench, supplemented by conditional mediation and the judicious use of special procedures; regarding compensation mechanisms, the punitive damages mechanism stipulated in existing public interest litigation laws—which can regulate fraudulent conduct—should be adapted and applied. Only through a systematic construction from interpretation method to legislation method can this judicial innovation originated from case exploration be solidified into a new long-term social governance mechanism for safeguarding the health rights and interests of all citizens and the order of the medical market.

*Keywords:* overmedicalization, public interest litigation, public interest, procuratorate

## Why Should Excessive Medical Treatment Be Included in the Public Interest Litigation Regulatory Framework?

### Semantic Definition and Manifestations of Overmedicalization

**Semantic definition of overmedicalization.** To effectively regulate excessive medical treatment, the prerequisite is to clarify what constitutes excessive medical treatment. Generally speaking, excessive medical treatment refers to unreasonable or unnecessary medical procedures performed by medical institutions and their personnel during diagnosis and treatment that violate medical standards or exceed the actual needs of the patient's condition. Scholars argue that overtreatment generally refers to healthcare providers offering medical services to patients that exceed their actual needs in the absence of clear health benefits (Zhang, 2003). Its typical characteristics are systemic and covert; it is not an isolated or accidental medical error, but rather often a systemic behavior embedded within specific diagnostic and treatment models or operational strategies. For example, by expanding disease definitions to include physiological phenomena or normal life experiences that are not inherently pathogenic within the scope of medical intervention, individuals are subjected to medical services in non-essential situations (Brodsen et al., 2018). In practice, this manifests as performing surgeries on patients who do not meet surgical criteria, among other instances. Overmedicalization refers to a series of actions throughout the entire diagnostic and treatment process that violate medical standards or exceed patients' actual needs, thereby infringing upon their personal and financial rights.

**Specific manifestations of overmedicalization.** Firstly, the excessive use of diagnostic tests. The overuse of imaging tests is one of the typical manifestations of overtreatment, referring to situations where patients undergo an excessive number of tests unrelated to their actual condition or tests that exceed the necessary scope. In practice, this type of excessive testing is the most common and frequently occurring scenario.

Secondly, the excessive use of pharmaceutical preparations. Excessive prescribing refers to situations where patients receive medications prescribed by hospitals that are clearly inconsistent with their actual condition and exceed the scope of rational drug use. This behavior constitutes a clear case of physicians abusing medications, and the potential harm to patients' physical health—or the specific extent of such harm—cannot be accurately estimated. Research indicates that the rate of intravenous infusion among patients with the common cold in China is 48%, which exceeds the World Health Organization's recommended standard (Su, 2022). In practice, driven by financial incentives, some medical institutions frequently accept kickbacks from pharmaceutical companies and prescribe expensive medications to patients, thereby increasing the financial burden on patients or the public treasury, while the therapeutic efficacy may not necessarily be superior to that of standard medications.

Thirdly, the overutilization of inpatient services. According to the 2023 Statistical Bulletin on the Development of China's Health and Healthcare Sector, China's annual hospitalization rate in 2023 was 21.40% (National Health Commission of the People's Republic of China, 2024). In practice, overmedicalization in inpatient care has evolved into a full-chain model spanning admission—treatment—medication—testing, deliberately slowing down the pace and duration of diagnosis and treatment. At the same time, medication dosages during hospitalization tend to be excessively high and frequent, which not only significantly inflates medical costs but also creates safety risks such as adverse drug reactions and the proliferation of drug-resistant bacteria.

Fourth, the practice of excessive surgical intervention. Excessive surgery refers to procedures performed on patients that are clearly inconsistent with the methods and approaches required for the diagnosis and treatment of their condition; it is the most invasive and harmful form of overmedicalization. Its core characteristic lies in surgical decisions being detached from objective clinical needs and instead serving improper economic motives.

**The legitimacy of public interest litigation against overmedicalization: Centered on the public interest.**

*Waste of public finances.* According to data from the 2024 National Statistical Bulletin on the Development of Medical Security released by the National Medical Security Administration, total expenditures from China's basic medical insurance fund have shown a sustained and rapid growth trend. By the end of 2024, total expenditures from the basic medical insurance fund had reached 2,976.403 billion yuan (National Healthcare Security Administration, 2025). Although these figures cannot be entirely attributed to overtreatment, in China's first public interest lawsuit regarding overtreatment, the Expert Consultation Opinion on Medical Technology issued by the Huangshi Medical Association determined that, among 125 sampled medical records, overtreatment—such as performing surgeries on patients who did not meet surgical criteria—resulted in direct medical costs as high as 176,673.65 yuan (Yan, 2025). The vast majority of these costs—particularly since the hospital in question is a designated medical insurance provider—were ultimately settled and paid by the basic medical insurance fund. This means that the fund pool collectively raised by all insured individuals has footed the bill for a large number of surgeries, examinations, and treatments that were unnecessary in the first place. Every instance of non-compliant medical practice continues to deplete limited public healthcare resources. As of November 2025, a search of judicial documents on the Beida Fabiao platform under the Case Reason category for cases containing both excessive medical treatment and medical insurance yielded 11 cases, most of which were from the past five years. For example, in Case Xu v. Zhan<sup>1</sup>, the plaintiff's daily hospital bed fee was as high as 480 yuan; the court found this to be significantly higher than the general standard in Nanjing, resulting in an overpayment of 96,140 yuan compared to the base rate. In Case Jiang v. Xiao's Clinic in Jiahe County<sup>2</sup>, a clinic claimed 4,500 yuan per dressing change for burn treatment (10 sessions in total); the court, referencing government-guided pricing, determined the rate to be 860 yuan per session, resulting in an overpayment of 36,400 yuan. Such conduct infringes upon the collective property rights of an unspecified number of insured individuals and possesses distinct attributes of public economic interest. Public interest litigation can directly address such conduct through broad-ranging remedies, requiring the perpetrators to compensate for the losses incurred by the medical insurance fund, thereby achieving judicial protection of public property.

*Harm to life, health, and safety.* The harm caused by overmedicalization is not limited to the economic sphere; it directly infringes upon humanity's most fundamental right—the right of life and health—and poses risks to the general public. The World Health Organization (WHO) has repeatedly emphasized in its reports on patient safety that unnecessary medical care itself constitutes a patient safety risk (World Health Organization, 2023). For example, unnecessary radiological examinations expose patients to additional ionizing radiation, and

---

<sup>1</sup> No. (2024) Su 0113 Min Chu 588.

<sup>2</sup> No. (2022) Xiang 1024 Min Chu 773.

long-term accumulation increases the risk of future cancer. The unnecessary use of antibiotics is the primary factor driving the emergence of drug-resistant bacteria, and infections caused by such bacteria have become a major global public health threat. Unnecessary surgeries directly lead to a series of foreseeable complications, including anesthesia risks, postoperative infections, and organ damage. More seriously, overtreatment can cause irreparable harm to patients' right to life and health. Beyond physical suffering, such practices can also impose significant psychological stress on patients. For instance, a common saying among the public is, I dare not go to the hospital—once I go to the hospital, it costs hundreds or even thousands. If these medical irregularities are not effectively regulated, the public will develop a sense of frustration and despair regarding illness and medical care. Healthcare should inherently be a serious and cautious endeavor. We cannot allow the cost of one extra incision to become the norm, nor can we permit the widespread practice of overtreatment to distort the public's health perceptions, fuel medical consumerism, and undermine the preventive-oriented health philosophy—thereby negatively impacting the health literacy of society as a whole.

*Traditional regulatory approaches are ineffective.* Although traditional remedies have achieved some success in addressing medical malpractice, they remain inadequate to meet the practical need for redress in cases of harm caused by overtreatment. Currently, China's existing regulatory framework for overtreatment primarily relies on three avenues: administrative oversight, civil tort litigation, and criminal sanctions. However, as demonstrated by the Huangshi case, the hospital in question has been subject to administrative penalties every year since 2020 for illegal activities, yet the practice of overtreatment persisted for several years. This exposes the fact that while administrative oversight can impose frequent penalties, it lacks sufficient deterrent effect and struggles to fundamentally curb systemic, profit-driven medical misconduct. The threshold for criminal sanctions is extremely high, making them a last resort of the judicial system, applied only in the rare instances where such conduct results in the death or severe health damage of the patient. Civil tort litigation, as a means of private interest redress, is the most common method of seeking redress currently available. However, in cases of medical malpractice involving overtreatment, patients often lack professional medical and legal knowledge, potentially leaving them unaware that their rights have been infringed; on the other hand, such cases present individual patients with the dilemma of difficulty in proving liability, high litigation costs, and low compensation amounts. From the patient's perspective, the economic loss resulting from a specific act of overtreatment may be relatively small (such as a few hundred yuan in additional examination fees), yet pursuing justice requires a significant investment of time, money, and energy. This high-cost, low-return dynamic leads the vast majority of victims to remain silent.

Furthermore, private litigation only compensates for individual damages that the plaintiff can prove, failing to address intangible losses to the public interest. Overmedicalization not only creates widespread and latent health risks but also inflicts abstract and systemic harm on the medical trust system and health insurance funds—issues that private litigation is powerless to address or remedy. In contrast, public interest litigation is precisely designed to address these shortcomings. In public interest litigation, the procuratorate or statutory social organizations act as plaintiffs, leveraging their professional expertise and resources to overcome the challenges of burden of proof. Their claims are not limited to compensation for individual cases but extend to requiring defendants to cease infringements, rectify medical practices, and compensate for losses to public funds, thereby achieving comprehensive and preventive protection of the public interest.

Finally, the pioneering case practice of public interest litigation against overmedicalization has yielded positive social outcomes. In the nation's first such case, the Huangshi Municipal Health Commission proactively requested the procuratorate to intervene through public interest litigation to combat medical malpractice. This initiative generated significant and favorable responses regarding the rectification of the local healthcare system, bolstered public trust in the procuratorate's role in safeguarding public interests through such litigation, and established a deterrent effect for the future. In this case, the punitive damages sought by the procuratorate and supported by the court were calculated based on a sample of medical records; however, their legal effect was intended to punish and deter all past instances of overtreatment by the defendant hospital, while also serving as a warning to other potential violators.

### **Current Regulatory Framework of Public Interest Litigation Against Overmedicalization**

#### **Legislative Level: A Systematic Examination From the Civil Code to the Civil Procedure Law**

Excessive medical treatment has long been a hidden ailment in the healthcare sector and has been a key focus of legislators. Article 1,227 of the Civil Code serves as the primary legal source regulating excessive medical treatment, stipulating that medical institutions and their medical personnel shall not conduct unnecessary examinations in violation of diagnostic and treatment standards. In addition, special laws related to medical practice also impose specific regulations on overtreatment. For instance, Article 54, Paragraph 1 of the Basic Law on Medical and Health Care and Health Promotion stipulates that medical and health personnel shall follow the principles of medical science, comply with relevant clinical diagnostic and treatment technical standards, operational protocols, and medical ethical norms, use appropriate technologies and medications, provide reasonable diagnosis and treatment, and treat patients according to their actual conditions; they shall not subject patients to overtreatment; Article 31 of the Physicians Law stipulates that physicians shall not take advantage of their official positions to solicit or illegally accept property or seek other improper benefits; nor shall they subject patients to unnecessary examinations or treatments. However, such provisions are merely declaratory clauses—principled guidelines regarding overtreatment—and lack specific criteria for determination or penalties. Regarding legal liability and regulatory measures, the provisions state that where an act constitutes a crime, criminal liability shall be pursued in accordance with the law; where personal injury or property damage is caused, civil liability shall be borne in accordance with the law<sup>3</sup>, thereby tentatively defining the criminal and civil liability for overtreatment.

Regarding the legal framework for public interest litigation, Article 58 of the Civil Procedure Law defines the basic scenarios for initiating such litigation in China, including acts that harm public interests such as environmental pollution and infringement of the rights and interests of numerous consumers. It can thus be seen that while the scope of public interest litigation does not explicitly include acts of overtreatment, this does not imply that public interest litigation regarding overtreatment lacks a theoretical basis. After all, Article 58 of the Civil Procedure Law refers to acts that harm public interests, using the word etc. to encompass a broader range of such acts, thereby reinforcing an open approach (Ding, 2024). At a more granular level, some local

---

<sup>3</sup> Article 106 of the Basic Medical and Health Care and Health Promotion Law of the People's Republic of China; Article 63 of the Physicians Law of the People's Republic of China.

jurisdictions have linked excessive medical treatment to public interest litigation for consumer protection; for example, the Hubei Provincial Regulations on the Protection of Consumer Rights and Interests stipulate that for-profit medical institutions must not conduct unnecessary examinations or treatments, and such acts fall within the scope of civil public interest litigation for consumer protection.

### **Judicial Perspective: An Depth Analysis of the Nation's First Civil Public Interest Litigation Case**

**Overview of the first public interest litigation case on overmedicalization.** The first public interest litigation case involving excessive medical treatment (hereinafter referred to as the Huangshi case) stemmed from repeated illegal practices at a local hospital in Huangshi City, Hubei Province, including charging fees exceeding established standards and duplicate billing. Furthermore, random inspections by administrative authorities revealed that a large number of medical records contained instances of surgeries performed on patients who did not meet the criteria for such procedures. Although the hospital was fined tens of thousands of yuan annually, it continued to commit these violations without correction. Consequently, the local Health Commission requested the procuratorate to initiate a public interest litigation to address the hospital's excessive medical practices. Through the joint efforts of the Huangshi Municipal People's Procuratorate, the Huangshi Municipal Health Commission, and the Municipal Medical Association, the court ultimately ruled in favor of the procuratorate's claims. Using the costs associated with the sampled medical records as a basis and referencing the Consumer Rights Protection Law, the court ordered the defendant to pay punitive damages of over 530,000 yuan. This case directly addresses the challenges in regulating excessive medical practices. By leveraging consumer protection frameworks to address medical malpractice through public interest litigation and determining punitive damages through professional appraisals and sample-based calculations, it represents a significant breakthrough.

**The innovative aspects of the Huangshi case and analysis.** Firstly, innovative application in legal characterization. In the absence of specific legal provisions for public interest litigation directly targeting overmedicalization, the procuratorate innovatively invoked the Consumer Rights Protection Law and the relevant local regulation, the Hubei Provincial Consumer Rights Protection Regulations. This first-of-its-kind civil public interest litigation regarding overmedicalization characterized the overmedicalization practices of for-profit medical institutions as consumer fraud infringing upon the rights of unspecified consumers. The core legal reasoning is as follows: For-profit medical institutions provide paid medical services to the general public, which constitutes a commercial activity; patients receiving these services possess the characteristics of consumers. Therefore, their systematic and fraudulent acts of over-treatment infringe upon the legitimate rights and interests of a large number of unspecified consumers and disrupt the fair order of the medical market, thereby meeting the criteria for accepting a civil public interest lawsuit regarding consumer rights. Although this breakthrough represents an expansive interpretation of the term "consumer" by the procuratorial authorities to protect the public interest, it successfully incorporates the case into the existing framework of public interest litigation. However, based on this logic, it applies only to purely for-profit medical practices, such as cosmetic medicine, and cannot be extended to traditional medical fields where excessive medical treatment is also prevalent. Furthermore, patients in cases of excessive medical treatment cannot be equated purely with consumers. The core of the doctor-patient relationship lies in the treatment and safeguarding of the right to life and health, rather than a simple exchange of goods or services. The subject matter involves personal specificity, irreversibility, and extremely

high risk, far exceeding the scope of general goods or services typically regulated by the Consumer Rights Protection Law. The fact that medical practices—which possess strong public interest attributes—must currently rely on the Consumer Rights Protection Law, designed to regulate equal commercial relationships, for redress highlights the absence of specialized legislation. To better distinguish between the consumer and medical domains, future regulatory efforts should place greater emphasis on defining the concept of “patient”, differentiating between various subject statuses, refining rules for the protection of patient rights, and constructing a new regulatory framework for excessive medical treatment.

Secondly, exploration and innovation in liability. The Huangshi case marked a significant exploration in liability allocation by asserting and awarding punitive damages. In this case, the medical institution intentionally misled patients by providing false information or concealing the truth, and its practice of over-treating patients constituted fraud. The procuratorate applied the provisions of the Consumer Rights Protection Law by analogy to claim punitive damages at three times the amount of the actual losses. Compared to the maximum administrative fine of 50,000 yuan previously imposed, punitive damages have significantly increased the cost of non-compliance. Regarding the specific calculation, given the difficulty of precisely quantifying the losses of all victims, the court adopted the sample extrapolation method proposed by the procuratorate. The medical expenses paid by patients in the sample medical records were used as the base for calculating punitive damages, and combined with the return one, compensated three punitive damages provision for fraudulent acts under the Consumer Rights Protection Law; the total compensation amount was determined. This final disposition effectively harnessed the punitive and deterrent functions of punitive damages, thereby fulfilling the preventive role of public interest litigation by the procuratorate. However, the author believes that regarding the allocation of liability, the disposition of the compensation remains an unresolved issue. There is still some ambiguities regarding whether the funds should be remitted to the state treasury or used to establish a patient relief fund; specific rules for the allocation and assumption of liability in the future still require further refinement. Overall, this initiative not only addresses the shortcomings in the severity and deterrent effect of administrative penalties but also flexibly interprets and applies existing legal frameworks, directly providing valuable experience and reference for future judicial practice.

It is evident that while public interest litigation against overmedicalization has achieved key breakthroughs in institutional reform, it currently remains a fragmented implementation system composed of diverse stakeholders yet lacking sufficient coordination. For it to evolve into a stable, predictable, and long-term governance mechanism, systematic construction at a deeper level is still required—including bridging the tension between legislation and the judiciary, breaking down procedural barriers among diverse stakeholders, and shaping a more collaborative regulatory model.

### **A Concrete Examination of the Regulatory Dilemmas in China’s Public Interest Litigation Against Overmedicalization**

#### **From Nothing to Something: Legislative Interpretation and Adaptation?**

**The absence of specialized legislation.** Although there are currently specific provisions prohibiting excessive medical practices, these rules are overly general, as evidenced by the following aspects. First, regarding the scope of actors, there is currently no detailed definition of the entities engaging in excessive medical

practices—it remains unclear whether this is limited to traditional non-profit institutions and their staff, or whether it extends to emerging for-profit medical entities such as private practitioners/massage therapists, cosmetic medical clinics, rehabilitation centers, and maternal and infant care centers. However, the healthcare sector encompasses a wide range of specialized fields and categories. To effectively combat medical malpractice, a more detailed classification system is essential, requiring specific regulations tailored to each category. Second, regarding the nature of the acts, excessive medical practices manifest in various forms. Medical activities are long-term and holistic in nature, yet the diagnostic and treatment standards used in the Civil Code to determine unnecessary examinations are vague and lack practical applicability (Zhang, 2022). The author believes that any stage of the medical process that exceeds reasonable limits or violates clinical practice standards can be deemed excessive medical treatment. This article repeatedly emphasizes the importance of defining excessive medical treatment because any ambiguity in this definition directly affects the applicability of the public interest litigation model. Indeed, a key factor in determining whether this specific type of doctor-patient dispute can be addressed through public interest litigation lies in the specific circumstances of the excessive medical treatment. As mentioned earlier, to initiate a public interest lawsuit regarding medical overuse, two approaches are currently available: First, an expansive interpretation of damage to public interests under the Civil Procedure Law is required, though no precedents from this perspective have yet emerged in judicial practice; second, drawing on the Huangshi case, medical overuse could be characterized as consumer fraud, thereby transforming it into a traditional type of consumer protection public interest lawsuit.

**Disguised interpretation of special laws.** Currently, China's specialized regulation of overtreatment primarily relies on the Basic Healthcare and Health Promotion Law and the Physicians Law. Faced with the apparent lack of legal basis for public interest litigation regarding overtreatment, after a careful examination of the provisions of special laws, it concludes that there remains a viable path for overtreatment cases to proceed through public interest litigation, thereby opening up possibilities for establishing a Chinese model of such litigation.

On the one hand, Article 3, Paragraph 2 of the Basic Law on Medical and Health Care and Health Promotion stipulates that the medical and health care sector shall adhere to the principle of public interest. This legal principle indicates that healthcare work is carried out to safeguard the legitimate interests of the public. For rights to meet the requirements of legality, they must, at a deeper level, conform to the fundamental spirit and principles of modern rule of law and the modern laws it demands (Yao, 2010). The typical significance highlighted in the 13 typical cases released by the Supreme People's Procuratorate as part of the special supervision campaign "Public Interest Litigation: Safeguarding a Better Life" emphasizes the need to protect the public interest to the greatest extent possible (Supreme People's Procuratorate, 2023). Therefore, the right to file public interest litigation regarding overmedicalization aligns precisely with the principle of public interest, demonstrating the legitimacy and feasibility of initiating this new form of public interest litigation. Furthermore, Article 97 of the Basic Law on Medical and Health Care and Health Promotion stipulates that the state encourages citizens, legal persons, and other organizations to exercise social supervision over medical and health care and health promotion work. The term social supervision in this provision once again underscores and confirms the public interest nature of medical and health care activities, indicating that the general public possesses the right to defend lawful and standardized medical practices in the healthcare sector. The remedial measures stipulated in the second paragraph

of Article 97 also confirm that medical practices possess a dimension of public governance and regulation: Any organization or individual has the right to file complaints or reports regarding acts that violate the provisions of this law with the health authorities of people's governments at or above the county level and other relevant departments, thereby ensuring the implementation of oversight activities.

On the other hand, Article 49 of the Physicians Law stipulates that people's governments at or above the county level and their relevant departments shall incorporate the prevention and resolution of medical disputes into the comprehensive social governance system. This comprehensive social governance system provides precedents for other types of public interest litigation. For instance, regarding cultural relic protection—a typical category of public interest litigation—the National Cultural Heritage Administration previously specified in a notice regarding the 13th Five-Year Plan for the Development of the National Cultural Heritage Cause that efforts should be made to incorporate cultural relic safety into the comprehensive social governance system (National Cultural Heritage Administration, 2017). This can be interpreted as a sign of the times. As an area also incorporated into the comprehensive social governance system, and given that overmedicalization has emerged as a key issue in medical dispute resolution in recent years, it is entirely legitimate, reasonable, and appropriate to resolve such disputes through public interest litigation. In summary, by analyzing the principle of public interest, the social supervision provisions, and the regulations regarding incorporation into the comprehensive social security management system, it is evident that excessive medical treatment embodies values of public interest protection and requirements for multi-stakeholder governance. This provides a potential legal basis and normative foundation for interpretatively incorporating disputes over excessive medical treatment into the framework of public interest litigation. Such a creative interpretation offers important insights for overcoming the apparent lack of legal basis within the current legal framework and for activating the latent potential of the system.

**Specific issues still require addressing.** While the creative interpretation of existing legal provisions has opened a potential normative pathway for public interest litigation regarding excessive medical treatment, this has only addressed the issue of formal legality within the system. The framework remains fragmented, and if the intention is to put this into practice, substantial and operational challenges have yet to be resolved. First, although interpretive theory can justify the qualifications and conditions for the parties initiating litigation, the law lacks explicit provisions regarding the specific scope, priority, and internal relationships of qualified plaintiffs. For instance, there is no clear guidance on whether the prosecution should bear sole responsibility for initiating such cases, or whether, in line with the objectives of public interest litigation, consumer associations or medical industry organizations that meet the conditions of the Civil Procedure Law should also be permitted to file suits. Furthermore, it remains unclear whether these entities should operate under a priority system or establish a collaborative mechanism. Second, public interest litigation regarding excessive medical treatment lacks tailored procedural rules covering every stage—from supervision and management, through investigation and verification, to trial and adjudication. Currently, China also lacks overarching principles governing public interest litigation, and there is a need to categorize the victims of such illegal acts and the extent of the harm caused. Third, pre-litigation procedures are a mandatory prerequisite for procuratorial organs to initiate public interest litigation. To establish a framework for public interest litigation regarding excessive medical treatment, detailed and feasible operational guidelines and procedural instructions are needed regarding the standards for exhausting pre-

litigation procedures, as well as whether lawsuits can be directly filed against acts of excessive medical treatment that have caused public interest harm but have not yet been subject to administrative penalties. Fourth, there remains a gap regarding the attribution of liability. As mentioned, excessive medical practices not only cause physical and psychological harm to patients but may also erode public finances. Therefore, regarding financial liability—such as how to determine the destination of compensation funds, whether they should be remitted to the state treasury or paid directly to patients—these are issues that remain to be resolved; as for non-pecuniary liabilities—such as public apologies, cessation of infringement, and written commitments—the mechanisms for their implementation and verification also require meticulous refinement. The finer details of liability must be given high priority; otherwise, inadequate penalties will fail to effectively achieve the practical benefits the public expects following the resolution of litigation. Fifth, traditional public interest litigation applies the evidentiary logic of civil litigation, namely the burden of proof rests with the party making the claim, requiring the plaintiff to provide evidence to support their claims. However, due to the high professional barriers and strong concealment inherent in cases of overtreatment, even prosecutorial authorities may not be able to produce precise evidence of overtreatment. Additionally, regarding medical practices, the Civil Code establishes a presumption of fault as the standard of proof. Given the unique nature of medical cases, overmedicalization should also be addressed in accordance with relevant provisions and principles applicable to medical cases. In the Tort Liability section of the Civil Code, certain medical malpractice cases directly adopt a presumption of fault, requiring medical institutions to prove their own lack of fault.

However, this provision only addresses the general burden of proof in medical tort cases between patients and medical institutions; it remains unclear whether it should be applied to specific cases of overtreatment. Regarding the issue of evidence, a special shift in the burden of proof could be established, such as having the procuratorial organs provide preliminary evidence that public interests have been harmed, while the involved medical institutions bear the burden of proving the necessity of their medical practices, thereby achieving a lawful and reasonable allocation of responsibility. Therefore, establishing a stable, operational, and sustainable pathway for public interest litigation regarding overtreatment is a long and arduous task. It is essential to confront the challenges and gaps in the process head-on, which in turn defines the foundational issues and innovative directions for the subsequent recommendations and reforms outlined in this paper.

### **Diverse Perspectives: Interpretations in Judicial Practice?**

Firstly, current exemplary judicial practice tends to classify such cases as consumer fraud, thereby applying provisions related to consumer rights protection. Whether the Consumer Rights Protection Law applies to medical disputes has long been a subject of controversy in academic circles, with mainstream views including the negative, affirmative, and compromise positions. This paper does not focus on the legitimacy of its applicability but rather on the fact that if all future cases of excessive medical treatment were to adopt the public interest litigation model under the Consumer Rights Protection Law, public and academic acceptance would likely be low, as this legal approach has not yet gained widespread recognition. As one of the parties involved in medical overtreatment disputes, nearly all hospitals and healthcare administrative departments endorse the negative view, arguing that the relationship between a hospital and a patient cannot be equated with that between a service provider and a consumer (Chen & Wang, 1999). The core issue lies in the fact that patients are not consumers. Hospitals' medical

fees adhere to government-mandated prices and cannot be subject to market-driven fluctuations. In particular, if hospitals treat patients as consumers—providing services commensurate with the amount paid—this effectively diminishes doctors’ professional responsibilities and obligations (Wang, 2002). Patients’ interests would be harmed, and in practice, patients are often granted additional policy benefits in medical treatment. Thus, medical services do not constitute an exchange of equal value. I do not deny that in purely for-profit medical institutions, a consumer relationship exists between the institution and the patient. However, reducing all doctor-patient relationships solely to a consumer relationship would actually give rise to numerous problems and blur the theoretical distinctions between these two distinct perspectives. Returning to the judicial framework itself, excessive medical practices actually warrant an independent public interest litigation pathway that is not dependent on other existing types of public interest litigation.

Secondly, the existing judicial dispute resolution model relies on a single entity. In day-to-day management, only the National Health Commission conducts supervisory spot checks on all relevant medical institutions and regulates illegal acts through administrative penalties upon discovering issues. This approach, which imposes insufficient penalties on relatively large medical institutions, has instead led to persistent irregularities in practice. Consequently, the coordination between administrative supervision and penalties and public interest litigation is crucial. When administrative penalties prove insufficient, public interest litigation should be promptly initiated to protect rights; however, this does not mean jumping directly to the litigation stage. Pre-litigation diversion ensures that cases genuinely requiring judicial intervention are reserved for court resolution (Zhang & Lou, 2024), thereby reducing the cost of seeking redress for patients—a vulnerable group. This aspect alone demonstrates the necessity of integrating the regulatory framework. At the same time, the success of individual cases hinges on the National Health Commission proactively referring leads and closely collaborating with the procuratorate, which also raises practical operational questions: When and based on what criteria should administrative agencies determine that a case requires referral to the judiciary, and how should the procuratorate assess whether administrative oversight has been “exhausted” or has failed? There is currently a lack of statutory, operational criteria for evaluating and referring such leads between the two bodies. Given the covert and complex nature of overtreatment, administrative agencies such as the National Health Commission alone find it difficult to detect such cases, necessitating careful professional assessment. This further demonstrates that entities such as medical associations can effectively participate in the process of identifying overtreatment cases. Moreover, procuratorial organs can provide redress through public interest litigation, thereby forming a complete regulatory chain. Consequently, incorporating more entities capable of initiating public interest litigation regarding overtreatment is an urgent issue that must be addressed in the systematic development of this framework.

### **Latent Indifference: Weak Social Awareness and Implementation Foundation**

**The concealment of harm and the dilemma of constructing a public agenda.** Unlike visible harms such as environmental pollution or food safety issues, the dangers of overtreatment are highly concealed and technical in nature. The harm caused by a single patient paying a few hundred yuan extra for tests or receiving a single dose of unnecessary but low-risk medication is difficult to detect, and the causal relationship is hard to self-verify. Most hospitals engaging in overtreatment employ tactics such as advertising to attract patients, exaggerating medical conditions, and switching to high-cost consumables mid-treatment. These methods are highly

professional and covert (Q. Yao, Zhang, Jiao, & L. Yao, 2025). This constitutes a frog in boiling water type of harm, making it difficult to build sufficient collective action in the public sphere to drive institutional reform. However, temporary neglect does not mean it is unimportant; the harm from overtreatment accumulates over time. Patients can fully utilize social oversight mechanisms to seek redress through professional organizations.

**The dispersed nature of doctor-patient cases complicates the determination of litigation requirements.** Victims of overtreatment are typically dispersed across geographical and temporal dimensions. While a single medical institution treats a vast number of patients annually, their individual grievances remain isolated and unconnected. This spatial fragmentation and temporal asynchrony objectively erode the practical foundation for victims to spontaneously organize and pursue collective rights protection. Even when their rights are infringed upon by the same systemic behavior, the lack of effective organizational ties and the coordination costs required for collective action make it difficult to consolidate individual claims into a collective force with legal impact (Fu, 2025). Consequently, relying on individual lawsuits initiated spontaneously by patients is inherently weak when confronting systemic, large-scale medical over-treatment, and cannot generate the scale necessary to counterbalance unlawful institutions.

### **Similar But Not Entirely Identical Precedents**

However, judicial practice in the field of public interest litigation regarding overtreatment in China is still infant, with judicial precedents being extremely scarce. There is only one case from Huangshi, Hubei Province, available for reference. This situation makes it difficult to rely solely on the induction of domestic experience to support the construction of a systematic institutional framework. Looking globally, some jurisdictions have already encountered similar legal disputes or alternative resolution pathways in their exploration of patient rights protection and public interest litigation in healthcare. Although these foreign practices differ from China's in terms of institutional foundations and legal contexts, their underlying logic and approaches can provide an important frame of reference for China's upcoming systematic institutional development. In light of this, it is necessary to broaden our perspective beyond China's borders to examine potentially relevant cases. The following three reference cases appear to share certain similarities, but there is no single template case with a direct parallel. Consequently, the foundational framework and practical implementation of public interest litigation regarding overtreatment remain underdeveloped, leaving significant room for innovation.

**The NEXT bio-research services laboratory kickback case: Shares similar objectives with overmedicalization cases (AnTuo Research, 2024).** In this case, the laboratory paid thousands of dollars in improper payments to doctors in Texas and Arkansas by disguising kickbacks as consulting fees or medical director fees, in order to induce doctors to refer laboratory testing business to it; it also paid commissions to independent contract marketers based on the volume of referrals. The laboratory submitted billing statements for testing fees despite being fully aware of the existence of these kickbacks. Compared to overtreatment, although the methods differ, there is a connection based on shared objectives. This case essentially involves inducing unnecessary medical services through kickbacks—doctors prescribing tests beyond actual needs driven by financial incentives. This bears a strong resemblance to the pattern of behavior in overtreatment public interest litigation, where surgeries are performed on patients who do not meet surgical criteria. Furthermore, the U.S. government recovers public funds and imposes penalties through civil litigation.

**The riverpark nursing home quality of care case: A public interest lawsuit filed for under-treatment<sup>4</sup>.**

In Oregon, a case involving nursing home service quality was filed, alleging that the facility failed to fulfill its duty of care or the so-called duty of reasonable care. Between 2017 and 2019, due to staffing levels falling below minimum requirements, the nursing home experienced an increase in the frequency and severity of preventable urinary tract infections, pressure ulcers, and falls among its residents. This clearly constitutes a public interest lawsuit for medical negligence, which, like public interest lawsuits for overmedicalization, falls under the category of medical malpractice. It shares similar social harm with the improper use of medical resources targeted by overmedicalization lawsuits, as both result in public health insurance funds covering substandard services. This case also serves as strong evidence for the conduct of public interest litigation in the medical field. A limitation is that, unlike the overmedicalization we are discussing, this represents a public interest litigation cause of action from a different perspective; therefore, it can only be used as a reference for lessons learned.

**The NextMed weight-loss drug advertising case: A public interest lawsuit involving pharmaceutical fraud (Federal Trade Commission, 2025).** In this case, the U.S. Federal Trade Commission filed a lawsuit against the telemedicine company NextMed, alleging that it engaged in deceptive advertising by making unsubstantiated exaggerated claims about weight-loss results, using fake user reviews, failing to promptly process cancellation and refund requests, and charging fees without obtaining consumers' explicit informed consent—all while capitalizing on the surging demand for weight-loss drugs. This case was brought as a public interest lawsuit on the grounds of fraud against the general public. However, it is worth noting that while it might be mistakenly categorized as medical fraud, it actually constitutes consumer fraud, which is fundamentally different from public interest lawsuits involving overtreatment in terms of the nature of the conduct. Nevertheless, it is noteworthy that this case provides an additional basis for initiating public interest lawsuits against overtreatment. The basis for the public interest litigation in the NextMed weight-loss drug case lies not in whether the product is a drug, but in the existence of fraudulent conduct and the disruption of market order—where the abstract concept of market order itself embodies a public interest. By the same token, excessive medical practices—such as the overprescription of medications or the performance of unnecessary diagnostic and therapeutic procedures—constitute acts of fraud against patients. Therefore, in the interest of protecting the medical order, public interest litigation may similarly be initiated on the grounds of anti-fraud.

## **The Systematic Construction of Public Interest Litigation Against Overmedicalization in China**

### **Litigants: From a Single Public Authority to a Dual-Track Collaborative Framework**

**The procuratorate as the core party in initiating public interest litigation.** According to relevant provisions of the Organic Law of the People's Procuratorates, People's Procuratorates shall, in accordance with the law, initiate public interest litigation. Their central and leading role in public interest litigation has been explicitly granted, and judicial practice reflects this status; however, certain details still need to be supplemented in the context of public interest litigation regarding excessive medical treatment. First, attention should be paid to the prosecutorial organs' role as a safety net. In Germany, a relatively pioneering jurisdiction abroad, public

---

<sup>4</sup> <https://www.justice.gov/usao-or/pr/us-attorneys-office-participates-national-health-care-fraud-takedown-resulting-2-million> (accessed on December 3, 2025).

authority bodies have not yet been designated as plaintiffs; instead, there has been a shift from the theory of the state's active role to the

theory of the state's auxiliary role, positioning public authority bodies as a backup support mechanism. When China's 2017 amendment to the Civil Procedure Law established the procuratorial civil public interest litigation system, Article 58, Paragraph 2, included a supplementary provision stipulating that such litigation may be initiated where there are no organs or organizations as specified in the preceding paragraph, or where such organs or organizations fail to file a lawsuit.

This provision clearly demonstrates China's stance of treating the intervention of public authorities as a fallback measure. Second, when initiating public interest litigation, procuratorial organs may flexibly leverage social forces and professional institutions to foster collaboration, thereby overcoming challenges such as the high barriers to entry in the medical field and the difficulty of gathering and verifying evidence. Most importantly, with the subject as the focal point, the forthcoming Law on Public Interest Litigation by Procuratorial Organs should explicitly include "acts of excessive medical treatment in the healthcare sector that infringe upon the legitimate rights and interests of numerous unspecified patients" within the scope of the procuratorial organs' public interest litigation responsibilities, thereby ensuring that public interest litigation regarding excessive medical treatment has a more concrete and credible legal pathway to follow.

**Supplementary prosecution rights of relevant social organizations.** In China, statutory public interest litigation frameworks generally reserve the right to file lawsuits for relevant industry associations or social organizations, such as the public interest duties of consumer associations stipulated in Articles 37 and 47 of the Consumer Rights Protection Law, which include the authority to file lawsuits in accordance with the law; similarly, Article 58 of the Environmental Protection Law grants qualified social organizations corresponding litigation rights, and public interest litigation regarding environmental protection is further supported by specific judicial interpretations that provide detailed provisions on the standing of social organizations as plaintiffs, conditions for filing lawsuits, and trial procedures, offering a relatively comprehensive set of operational guidelines.<sup>5</sup> Article 58 of the Civil Procedure Law also grants relevant organizations standing, specifically the qualification for state organs and relevant organizations as prescribed by law to initiate civil public interest litigation. Therefore, when regulating excessive medical practices through public interest litigation, we should draw on the experience of ecological and environmental public interest litigation. Through judicial interpretations or specialized legislation, we should clarify and activate the right to sue of medical-related social organizations, such as medical associations, in the field of excessive medical practices. Given the highly specialized nature of medical disputes, a support for prosecution system could be established, whereby social organizations, upon discovering leads, may apply to the procuratorial organs for support in investigation, evidence collection, and legal argumentation, and then independently file a lawsuit.

### **Precise Definition of Grounds for Litigation**

**Behavioral dimension: Using violation of diagnostic and treatment standards as the core benchmark.** Accurate judicial determination requires a clear definition of the scope of overtreatment. When assessing the illegality of conduct, clinical practice standards should serve as a key reference, while also taking into account

---

<sup>5</sup> Articles 1 through 17 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases".

comprehensive clinical evaluations, including the quality rating of medical institutions, the ethical conduct of medical personnel, the diversity of patient conditions, and individual physiological differences (Zhu, 2019). While adhering to principles, special circumstances should be considered, and a rigid adherence to a single clinical practice standard should not be required. Specifically, the primary basis for judgment should be whether there has been a violation of laws, regulations, clinical practice guidelines, clinical technical operating standards, industry standards, and other clinical practice norms. This standard should be confirmed and refined through legislation: First, the specific circumstances constituting unnecessary examinations must be clarified. The Supreme People’s Court should issue judicial interpretations to define the concept of unnecessary—which can be interpreted broadly or narrowly—or to delineate the scope of what constitutes necessary. Second, Article 1,227 of the Civil Code currently addresses only unnecessary examinations, whereas in judicial practice, excessive medical care is more frequently manifested in excessive aspects of treatment such as hospitalization and prescribing medications. Therefore, unnecessary treatment should be explicitly included, and its scope further refined; for instance, unnecessary treatment could be interpreted to include excessive medication or redundant surgical procedures. Furthermore, unnecessary nursing care should be included. Excessive nursing care pertains to the rehabilitation of patients’ physical functions, including hospitalization and the use of rehabilitation equipment. Adding excessive nursing care would not only address medical practice needs but also align with patients’ demands for rights protection. Therefore, the author believes that the scope of excessive medical care should encompass all diagnostic and therapeutic acts that exceed the actual needs of the disease, including excessive examinations and treatments, as well as healing-oriented medical services such as excessive nursing care and excessive health maintenance (Zhang, 2022). Finally, the evidentiary weight of professional opinions must be established. Legislation should explicitly stipulate that expert opinions or appraisal reports issued by medical associations at the prefectural level or above, or by qualified third-party medical quality evaluation institutions, and verified through statutory procedures, may serve as key evidence for determining the facts of excessive medical care. In addition to the aforementioned core criterion of violation of clinical practice standards, specific acts of excessive medical care are illustrated in the table below, thereby providing more concrete guidance for the grounds of public interest litigation regarding excessive medical care:

Table 1

*Specific Types of Excessive Medical Treatment*

Behavior type	Specific manifestations	Criteria for inclusion in public interest litigation (systemic/widespread/public harm)
Excessive diagnostic testing	(1) Using CT, MRI, and PET-CT as routine screening without clinical indications (2) Repeating identical tests within a short period (3) Mandating bundled “health checkup packages” or “routine admission packages” (4) Promoting “high-end health checkups” with no clinical significance	(1) Imposed on an unspecified large number of patients through standardized and proceduralized methods (2) Causing systemic drain on medical insurance funds (3) Patient groups are dispersed, making it difficult for individuals to detect and assert their rights
Abuse of pharmaceutical formulations	(1) Antibiotic overuse (2) Overuse of intravenous infusions (3) Rampant use of adjunctive medications (4) Off-label use of medications without evidence-based justification	(1) Diagnostic and treatment models embedded in hospital operational strategies (2) Harms the health of an unspecified number of patients (3) Increases unreasonable expenditures in public health insurance
Overutilization of inpatient services	(1) Unnecessary inpatient admissions (admissions for minor conditions) (2) Splitting hospital stays to circumvent insurance coverage limits (3) Prolonging hospital stays beyond discharge criteria (4) Charging excessive nursing fees that do not correspond to the actual level of care	(1) The conduct exhibits characteristics of persistence and commercial operation (2) Occupying scarce hospital bed resources and infringing on the rights of other patients (3) Leading to the wasteful expenditure of health insurance funds

Table 1 to be continued

Overuse of surgical procedures	(1) Performing surgeries on patients who do not meet surgical criteria (2) Expanding the scope of surgery (3) Repeated surgeries on the same lesion within a short period (4) Upgrading to higher-cost medical supplies during surgery	(1) Invasive, posing a direct threat to life and health (2) Covert nature (relying on physicians' professional judgment) (3) Victims are geographically dispersed and the time span of their medical visits is extensive
Abuse of high-value medical supplies	(1) Overuse of stents (2) Upgrading of medical devices (replacing standard devices with imported or innovative ones) (3) Reuse of single-use medical devices and repeated billing (4) Inducing the replacement of medical devices with higher-priced alternatives during surgery	(1) Highly correlated with excessive surgery (2) Significantly inflates medical costs (3) Harms the financial interests of unspecified patients
Induced referrals	(1) General hospitals and lower-level hospitals share revenue based on referral volume (2) Inter-departmental referrals increase treatment opportunities (3) Referring patients to third-party institutions with which there are financial partnerships	(1) The essence of the behavior is treating patients as a resource for profit (2) Systematically distorts medical decision-making (3) Undermines the credibility of the medical industry

**Outcome dimension: Establishing uniform standards for assessing damages.** According to tort law logic, the occurrence of actual harm is a prerequisite for filing a public interest lawsuit. However, since public interest lawsuits regarding overtreatment involve medical practices, the identification, differentiation, and quantification of harm require a high degree of expertise. On one hand, China's mechanism for assessing medical harm has long been plagued by the dilemma of medical appraisals being obscure and difficult to understand, resulting in low adoption rates (Liang, 2021), while judicial appraisals suffer from insufficient scientific rigor and professionalism, leading to low credibility (Zhang, 2016). To overcome this bottleneck, the overall approach is to leverage the respective strengths of judicial and medical experts, mobilize their enthusiasm, and foster mutual coordination to resolve the contradictions and issues inherent in the appraisal process. Some scholars have proposed that the appraisal mechanism for medical disputes could adopt an N + 2 + 1 expert model, where N represents clinical experts, 2 represents forensic pathologists, and 1 represents legal experts. The advantage of this combination lies in the deep integration of medicine and law (Feng & Zhao, 2019), as it includes both experienced clinicians and forensic pathologists well-versed in medical negligence, consequences, and causation, supplemented by legal experts. This approach can further clarify the medical principles and legal logic underlying expert opinions, enabling the precise initiation of public interest litigation for cases that meet statutory criteria. On the other hand, quantitative changes lead to qualitative changes. To prevent the misuse of judicial resources, a threshold of harm to the public interest must be established. Not all cases of excessive medical treatment are suitable for public interest litigation; if only private interests are harmed during the medical process, private remedies may be sought. Therefore, the legal interests harmed by the conduct must transcend individual private interests and touch upon the public interest to align with the original intent of initiating public interest litigation. Specifically, this includes: eroding the security of public medical insurance funds, resulting in the improper diversion of medical insurance funds; undermining the equitable distribution of basic medical resources; severely disrupting the order of regional medical markets and the foundation of industry integrity; and posing potential or actual risks to the life and health rights of an unspecified number of patients. To initiate a public interest lawsuit, it must be demonstrated that at least one of the above circumstances presents a significant risk, actual harm, or a serious threat of harm, thereby justifying regulatory intervention.

**Reference to Procedural Elements and Innovative Customized Design**

**Medical institutions bear the burden of proof regarding subjective conditions.** The difficulty of proof in medical malpractice cases is a well-known pain point, and it is also a major issue that must be directly addressed in the construction of public interest litigation procedures for excessive medical treatment. In public interest litigation, while public prosecution authorities or relevant social organizations have already assisted patients—as a vulnerable group—in gathering and verifying detailed evidence regarding the harmful act, the resulting harm, and the existence of causation, external forces seem to lack the capacity to address the element of fault, the subjective aspect. Requiring patients to submit evidence of the medical institution’s fault is excessively difficult, and this issue requires careful consideration and resolution. By category, public interest litigation cases involving excessive medical treatment fall under medical malpractice cases. In accordance with the law, the rules on the allocation of the burden of proof for medical malpractice in the Tort Provisions of the Civil Code should apply, namely the presumption of fault system—Article 1,222 of the Civil Code. The first circumstance under which a medical institution is presumed to be at fault is violation of laws, administrative regulations, rules, and other diagnostic and treatment standards. Furthermore, given the explicit provisions in Article 1,227 of the Civil Code and Article 54 of the Basic Law on Medical and Health Care and Health Promotion, which prohibit acts of overtreatment, a reasonable and complete logical chain is established here. In the allocation of the burden of proof in public interest litigation cases involving overtreatment, the defendant—i.e., the medical institution—is directly presumed to be at fault, and it is incumbent upon them to prove their own lack of fault; otherwise, they must bear the consequences of failing to meet the burden of proof.

**Flexible application of specific cross-examination procedures.** To enhance judicial efficiency, specialized trial procedures should be established based on the complexity of the case and its social impact. First, regarding disputes involving specialized knowledge, the court should, either on its own initiative or upon a party’s application, appoint independent medical experts to appear in court to offer opinions on the necessity of medical treatments and to cross-examine the expert reports submitted by both parties. This rule can effectively alleviate the difficulty of obtaining evidence. Second, where the procuratorate or industry associations have already completed preliminary evidentiary presentation—such as by providing statistical reports indicating abnormal treatment patterns or complaints from patient groups—the accused medical institution may be required to bear the further burden of proof regarding the necessity and compliance with medical standards of the disputed medical treatment during the trial. Third, the procuratorate should strengthen its capabilities in evidence collection and presentation, analyzing each case specifically to target weaknesses. For private medical institutions or specialized treatment facilities, it can collaborate with market supervision departments to examine various hidden details and evidence; for large, comprehensive public hospitals, it can coordinate with health administration departments to jointly collect reliable evidence. This approach can address the procuratorate’s typical difficulty in intervening in the social medical insurance system. Furthermore, to prevent the involved hospitals from exploiting professional barriers to self-justify the necessity of their actions, an independent Medical Standards Review Committee—composed of provincial judicial administrative departments and medical associations and separate from the involved medical institutions—could be established to conduct a neutral assessment of conflicts between their internal diagnostic and treatment guidelines and industry standards.

**Establishing jurisdiction at the intermediate people's court level and introducing cross-regional trial models.** Public interest litigation regarding overtreatment should establish a rule that such cases fall under the jurisdiction of Intermediate People's Courts or higher. First, the nature of the case determines the jurisdictional level. In practice, overtreatment often affects unspecified patients; when the number of affected individuals is large, the aggregated interests at stake are typically substantial. With a vast number of potential victims spread across diverse regions, the complexity of such cases far exceeds that of ordinary civil disputes. Article 283 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law explicitly stipulates: Public interest litigation cases shall be under the jurisdiction of the intermediate people's court at the place where the tort occurred or where the defendant is domiciled. This rule is equally applicable to the field of excessive medical treatment. Second, the complexity of the cases and the need for guiding precedents align with the jurisdiction of intermediate courts. Public interest litigation regarding excessive medical treatment often involves claims for substantial punitive damages, and the outcomes of such cases have a regulatory and guiding effect on the regional medical market order. Having these cases heard by intermediate courts or even higher-level courts better ensures the uniformity and authority of the rulings.

Building upon the establishment of intermediate court jurisdiction, the model of cross-jurisdictional trial adopted in administrative public interest litigation could be adapted. The institutional value of cross-jurisdictional trials lies primarily in two aspects: First, it eliminates local interference. Medical institutions often have intricate ties with local health and medical insurance authorities, and local trials may face implicit pressure from local protectionism. Cross-jurisdictional trials can effectively sever these conflicts of interest and ensure judicial independence. Second, it draws on the experience of administrative public interest litigation. In such cases, cross-jurisdictional adjudication has proven to be an effective institutional tool for resolving the dilemma of defendants being administrative agencies tried by local courts. Although public interest litigation regarding overmedicalization is a civil proceeding, it similarly faces the reality that medical institutions are key local entities; thus, the institutional logic of cross-jurisdictional adjudication can be adapted here.

**Establishing a public notice and registration system to safeguard potential victims' procedural participation rights.** A major core challenge in public interest litigation regarding excessive medical treatment lies in determining the scope of affected patients and safeguarding individual patients' rights to claim damages. In this regard, we can draw on the representative action for an indeterminate number of plaintiffs system stipulated in Article 57 of the Civil Procedure Law to establish a litigation registration mechanism. Specifically: First, the court with jurisdiction shall issue a registration notice. After accepting a public interest lawsuit, the People's Court shall, within 30 days, notify potential affected patients to register through a public notice. The notice shall specify: the scope of patients, the registration deadline, the registration method, and the required supporting documents. Second, specifically register cases involving overtreatment. For cases involving surgery performed without meeting surgical indications or hospitalization for treatment without medical indications—which are clearly instances of overtreatment—these should be specifically marked during registration to facilitate subsequent classification and handling. Third, the legal consequences of registration. Patients who have registered may have their claims for damages heard concurrently with the public interest litigation; patients who have not registered may file separate lawsuits after the public interest litigation judgment takes effect, but may rely on the facts already established in the public interest litigation. This arrangement both safeguards patients'

right to choose and avoids the waste of judicial resources caused by duplicate litigation, thereby advancing the rule of law principle of similar cases, similar judgments.

**Prohibiting the use of simplified or small claims procedures; instead, generally applying panel hearings and flexibly arranging trial deadlines.** Article 257 of the Interpretation of the Civil Procedure Law explicitly excludes cases involving national interests or public interests from the scope of application of the simplified procedure. Public interest litigation regarding overmedicalization centers on the core element of harm to public interests; the nature of such cases inherently places them within the scope of exclusion. Similarly, small claims procedures and summary proceedings cannot be applied because they are unable to accommodate the complexity of public interest litigation. The Civil Procedure Law stipulates that cases heard under the ordinary procedure shall be adjudicated by a collegiate bench. As public interest litigation involves public interests and its rulings have a societal impact, having a collegiate bench composed of three or more judges ensures a broader perspective, prudent adjudication, and high-quality rulings. Furthermore, Article 292 of the Interpretation of the Civil Procedure Law stipulates that even cases involving third-party actions for rescission with third-party effects shall be heard by a collegiate bench. By analogy, public interest litigation—which directly concerns the public interest—should all the more be heard under the collegiate bench system to reflect the prudence and authority of the judiciary.

Regarding trial time limits, arrangements should balance efficiency with special circumstances. According to Article 152 of the Civil Procedure Law, cases heard by people’s courts under the ordinary procedure shall be concluded within six months from the date of filing. If an extension is required due to special circumstances, it may be extended by six months with the approval of the president of the court; if a further extension is necessary, approval must be sought from the higher-level people’s court. Given the complexity of cases involving excessive medical treatment, this rule also applies to public interest litigation regarding such practices. Furthermore, due to the unique nature of the medical field, the following periods shall not be counted toward the trial deadline in public interest litigation concerning excessive medical treatment: First, the period for expert evaluation. The time required to commission professional institutions, such as medical associations, to conduct medical technology assessments and issue expert opinions, shall not be counted toward the trial deadline. Second, the period for public notice. The time required for the public notice of case registration and the public notice of mediation agreements shall not be included in the trial period. Third, the period for settlement negotiations. A reasonable period during which the parties negotiate rectification plans and compensation matters may, with the court’s approval, be temporarily excluded from the calculation of the trial period. Therefore, regarding the rules of the trial period system, a six-month benchmark should be established, while simultaneously implementing flexible mechanisms for exclusion and extension to ensure a harmonious balance between efficiency and special circumstances.

**Mediation and settlement mechanisms for conditional commitments.** Article 287 of the Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law explicitly stipulates: “In public interest litigation cases, the parties may settle, and the people’s courts may mediate”. The mediation agreement shall be announced, and the announcement period shall not be less than 30 days. Upon expiration of the announcement period, if the agreement is reviewed and found not to violate public interests, a mediation order shall be issued. This provision provides a direct basis for introducing a mediation mechanism into public interest

litigation regarding excessive medical treatment. In judicial practice, mediation in public interest litigation has been widely utilized. For example, in a public interest litigation case involving the production and sale of counterfeit drugs heard by the Huludao Intermediate People's Court, the court presided over the parties' reaching a mediation agreement, under which the defendant paid punitive damages and issued a public apology in provincial media. After the court publicly announced the mediation agreement in accordance with the law, it issued a mediation order<sup>6</sup>. Similarly, in a food safety public interest litigation case, the Dali Prefecture Intermediate People's Court facilitated an agreement between the parties through pre-trial mediation (Dali Intermediate People's Court, 2023). This demonstrates that the mediation system is a major avenue for resolving disputes in public interest litigation cases.

Therefore, for public interest litigation involving overmedicalization, the mediation and settlement mechanism can similarly be adopted, with a slight adjustment to introduce a conditional commitment mechanism—where the defendant medical institution makes a commitment to rectify the issues, clearly specifying the rectification measures, completion deadlines, and verification standards; if the institution subsequently violates the commitment and engages in overmedicalization again, it shall bear more severe punitive damages liability. Since public interest litigation aims to protect the public interest, the mediation agreements reached must undergo even stricter scrutiny. After all, Article 287, Paragraph 3 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China stipulates: After the expiration of the public notice period, if the People's Court, upon review, finds that the settlement or mediation agreement does not violate the public interest, it shall issue a mediation order; if the settlement or mediation agreement violates the public interest, it shall not issue a mediation order, but shall continue to hear the case and render a judgment in accordance with the law. With regard to the review of mediation agreements in public interest litigation concerning excessive medical treatment, the principle of public interest first must be upheld. Specifically: first, review whether the rectification plan is sufficient to eliminate the risk of harm to the public interest; second, review whether the amount of compensation is commensurate with the illegal profits and whether it has a punitive effect; third, review whether the commitment mechanism is enforceable and whether there is a possibility of circumventing the law.

**Exclusion and scope of special procedures.** Firstly, the prudent use and substantive review of preservation procedures. In public interest litigation regarding excessive medical treatment, given the complexity of the interests involved in such cases and the limitations of traditional formal review, a cautious approach should be taken toward the application of preservation procedures. First, as providers of medical services, the normal operations of medical institutions are closely tied to the healthcare needs of a large number of patients. If preservation measures such as seizure or freezing are taken lightly, it may render medical institutions unable to operate normally, thereby harming the public interest of even more patients. Second, while preservation procedures typically involve only a formal review, the factual determination in cases of excessive medical treatment is highly complex. A formal review alone is insufficient to accurately determine whether a conduct constitutes excessive medical treatment or whether the urgency warrants preservation measures. Therefore, the application of preservation procedures should adhere to the principle of substantive review: The applicant must

---

<sup>6</sup> (2024) Liaoning 14 Civil Pre-trial Mediation No. 31.

provide preliminary evidence demonstrating the existence of excessive medical treatment and the ongoing risk thereof; the court should conduct a hearing to hear the respondent's views and comprehensively assess the necessity and proportionality of the preservation measures. A preservation order may only be granted if failure to do so would result in irreparable harm to the public interest, and provided that the preservation measures would not unduly disrupt the normal operations of the medical institution.

Secondly, the limited scope of application for preliminary enforcement. The institutional function of preliminary enforcement lies in addressing the immediate and pressing needs of rights holders—such as urgent situations involving the recovery of alimony, support payments, child support, death benefits, and medical expenses. The core objective of public interest litigation regarding excessive medical treatment is to punish illegal conduct and safeguard the public interest, rather than to address the urgent medical needs of specific patients. Therefore, the scope for applying preliminary enforcement in such cases is extremely limited. However, exceptions may exist: If excessive medical treatment is ongoing and poses an imminent threat to the patient's life or health—such as the performance of an unnecessary surgery—the procuratorate may apply for preliminary enforcement to halt the infringing conduct. In such cases, the court should carefully review the illegality of the conduct and the urgency of the harm, conduct a substantive review, and may require the applicant to provide security. However, such situations are extremely rare in practice. The systemic nature of excessive medical treatment means it typically manifests as a pattern of diagnosis and treatment rather than a single emergency intervention; therefore, the application of preliminary enforcement should be strictly limited.

Thirdly, the potential for exploring judicial confirmation procedures. In local practice, the judicial confirmation mechanism for public interest litigation pioneered by the Zunyi Intermediate People's Court is worthy of attention. The court and the procuratorate jointly issued the Guidelines on Handling Judicial Confirmation Cases in Procuratorial Civil Public Interest Litigation, which provides judicial confirmation for public interest damage compensation agreements reached between the procuratorate and the infringer through pre-litigation negotiations, thereby achieving case classification based on complexity and diversified dispute resolution (Zunyi Intermediate People's Court, 2022). This mechanism offers valuable insights for cases of excessive medical treatment where the facts are clear and disputes are minimal—if medical institutions do not dispute the facts of the violation and are willing to voluntarily rectify the situation and provide compensation, the procuratorate may reach a pre-litigation agreement with them and apply to the court for judicial confirmation, thereby conserving judicial resources and rapidly restoring public interests.

### **Establishing a Mechanism for the Construction and Prudent, Reasonable Allocation of Punitive Damages**

Public interest litigation cases involving excessive medical treatment may not only harm the personal rights and property rights of individual or groups of patients, but may also create a negative precedent, leading to other hospitals emulating such practices to boost efficiency and causing market volatility or the paralysis of industry order. Therefore, to rectify unhealthy practices in the medical industry and compensate for the individual rights and public interests harmed by excessive medical treatment, there is an urgent need to establish a system of punitive damages tailored to the medical field—one that both punishes the chaos of excessive medical treatment and safeguards human rights and the collective interests of society while stabilizing the order of the medical market.

Beyond the theoretical justification for establishing punitive damages in public interest litigation regarding overtreatment, the necessity of such a system is equally evident at the regulatory level. According to the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Public Interest Litigation Cases Involving Consumer Rights, acts of consumer fraud are included within the scope of public interest litigation. Furthermore, the Consumer Rights Protection Law provides for punitive damages against business operators engaged in fraudulent practices. Together, these provisions demonstrate that acts of consumer fraud are subject to public interest litigation and punitive damages. Punitive damages not only serve a deterrent and regulatory function in theory but can also be effectively implemented to ensure the proper functioning of market order.

Firstly, to ensure reasonable compensation, it is necessary to standardize the nature and calculation of damages. Damages should be characterized as restorative compensation rather than mere punishment; therefore, we must move beyond the traditional mindset of fines being remitted to the state treasury and establish a compensation management system aimed at restoring the public interest. The calculation basis may adopt the sample extrapolation method explored in the Huangshi case, using the verified unreasonable costs associated with the sample as a foundation. The court should then determine the multiplier for damages by considering factors such as the nature of the conduct, its duration, the degree of willful misconduct, and the status of corrective measures.

Secondly, the allocation of compensation funds requires resolving the issue of identifying the claimants or beneficiaries. For patients who are identified at the time of filing the lawsuit or who are identifiable—that is, parties with a clear connection to the case—the compensation amount for such parties should consist of two parts: first, direct financial losses resulting from the actions of the medical institution involved, such as expenses for unnecessary medical treatments; and second, compensation for mental distress caused by the illegal conduct, such as consolation payments. If there is bodily harm, medical expenses for the injured party should also be provided or covered. For collective harm where victims cannot be identified, compensatory measures should be implemented. For instance, within the scope of medical services provided by the involved medical institution, compensation funds may be allocated to medical insurance funds, used to support primary healthcare, or directed toward public health education and campaigns promoting rational drug use, thereby injecting appropriate compensation into the healthcare system. Furthermore, to address the negative impact on the healthcare system, compensation funds can be allocated toward governance and standardization within the medical industry. This includes providing up-to-date training for medical institutions and their staff, as well as the joint development by medical and legal experts of a comprehensive, detailed, and actionable set of clinical practice guidelines. Such a comprehensive approach not only aligns with the original intent of public interest litigation to maintain market order but also prevents the systemic deprivation of individual rights to redress (Wang & Shen, 2025).

Thirdly, classifying the harms and consequences resulting from different types of overtreatment into a tiered system avoids a one-size-fits-all approach and better facilitates the realization of fair and reasonable social values. The core objective of adopting a tiered compensation mechanism is to ensure that victims suffering severe harm from overmedicalization receive the protection and rights they are entitled to. First, direct victims should receive the compensation and restitution they are entitled to; second, other stakeholders whose interests have been adversely affected—whether directly involved or indirectly impacted—should also be compensated; and third,

public interests that have been compromised—such as eroded doctor-patient trust, unreasonable medical billing mechanisms, and disorder in the medical treatment industry—require financial reinforcement, and a certain amount of compensation should be allocated for these purposes.

Fourthly, the entity responsible for managing punitive damages must be chosen with care. While it is generally believed that such funds should be centrally managed by the state's financial authorities, in practice, this model of incorporating them into the national treasury deviates from the original intent of establishing the public interest litigation system. Funds struggle to flow back to the areas where public interests have been harmed, and face the practical difficulties of difficulty in collection, management, and utilization. Furthermore, some scholars point out that the ownership of punitive damages should be defined as social property, distinct from state-owned assets, and subject to special property rules under social law (Gao, 2023). A more reasonable approach would be for statutory organizations to establish foundations or public interest trusts to manage these funds. For example, regarding the disposition of compensation in consumer public interest litigation, some scholars argue that punitive damages belong to the affected consumers, and the fund managing the compensation should establish channels for distributing the funds to them (Huang, 2020). The author also favors establishing a dedicated fund organization responsible for managing compensation arising from medical dispute cases, which would help ensure the compensatory function is effectively implemented and facilitate operational convenience and replicability.

### **Conclusion**

Overmedicalization severely infringes upon patients' personal and property rights, seriously disrupts medical order, and harms the public interest; it is a special legal issue that warrants attention and requires urgent improvement of the governance system. By lawfully initiating public interest litigation, procuratorial organs hold violators legally accountable, thereby fully demonstrating the institutional functions and unique value of such litigation in effectively resolving the challenges of protecting public interests and compensating for deficiencies in administrative oversight. This contributes the prosecutorial strength of public interest litigation to promoting the healthy development of China's healthcare sector and fully safeguarding the legitimate rights and interests of medical insurance, further proving that public interest litigation is the optimal solution to the problem of overtreatment. Compared to other types of public interest litigation, public interest litigation regarding overtreatment is still in its infancy and relies on other legal norms and independent legal interpretations for its definition and implementation. Therefore, constructing the theoretical and institutional framework for public interest litigation in this field will not only help highlight the importance China places on protecting public healthcare and the effectiveness of the law but will also contribute to the improvement of the rule of law system with Chinese characteristics. With the first public interest litigation case involving overmedicalization entering the public eye and sparking discussion, this paper focuses on the public interest nature of overmedicalization. By analyzing existing relevant legal rules, dispute resolution mechanisms, and the current state of regulation across legislative, judicial, and social levels, it proposes targeted recommendations for future implementation. Against the backdrop of the Law on Public Interest Litigation by Procuratorial Organs being placed on the legislative agenda and the public's heightened concern for healthcare rights, numerous potential issues remain in the area of public interest litigation regarding excessive medical treatment—which centers on the protection of social public

interests—and these issues await further exploration and refinement by both the academic and practical communities.

### References

- AnTuo Research. (2024). DOJ announcement: Laboratory testing service allegedly paid kickbacks to doctors, fined \$10.85 million. Retrieved from <https://www.everlaw.com.cn/index/PC/knowledgeDetail?id=7659> (accessed on December 2, 2025)
- Brodersen, J., Schwartz, L. M., Heneghan, C., O’Sullivan, J. W., Aronson, J. K., & Woloshin, S. (2018). Overdiagnosis: Its definition and non-definition. *The British Medical Journal: Evidence-Based Medicine*, 23(1), 1-3.
- Chen, S. Q., & Wang, S. F. (1999). Different perspectives on the application of the consumer rights protection law to medical disputes. *Chinese Journal of Hospital Administration*, 15(12), 736-738.
- Dali Intermediate People’s Court. (2023). Pre-trial mediation in public interest litigation safeguards food safety. Retrieved from <http://gw.yndlfy.gov.cn/article/detail/2023/10/id/7560073.shtml> (accessed on March 12, 2026)
- Ding, B. T. (2024). A systematic review of the development path of public interest litigation under the specialized legislation process. *Political Science and Law*, 43(3), 40-55.
- Federal Trade Commission. (2025). The U.S. Federal Trade Commission approved a final ruling against telemedicine provider NextMed, which was accused of improper billing for promoting and selling GLP-1 weight-loss programs through false advertising. Retrieved from <https://www.ftc.gov/news-events/news/press-releases/2025/12/ftc-approves-final-order-against-telehealth-provider-nextmed-over-charges-it-used-deceptive> (accessed on December 3, 2025)
- Feng, Y., & Zhao, M. (2019). Value construction of China’s medical malpractice appraisal system. *Modern Hospital*, 19(10), 1431-1433.
- Fu, X. G. (2025). An interpretation of the rules on cross-regional centralized exclusive jurisdiction for consumer civil public interest litigation cases. *Hebei Law Review*, 43(9), 19-38.
- Gao, X. (2023). The allocation and distribution of punitive damages in consumer public interest litigation: A cross-jurisdictional study based on the principle of distributive justice. *Law Science*, 68(12), 122-139.
- Huang, Z. S. (2020). A study on punitive damages in consumer public interest litigation. *China Legal Science*, 37(1), 260-282.
- Liang, X. F. (2021). A discussion on the development of medical appraisals in medical disputes. *Journal of Jiangxi Electric Power Vocational and Technical College*, 34(2), 119-120.
- National Cultural Heritage Administration. (2017). Notice on issuing the 13th Five-Year Plan for the development of the national cultural heritage sector (Wenwu Zhengfa [2017] No. 4). Retrieved from [http://www.ncha.gov.cn/art/2017/2/27/art\\_2237\\_43663.html](http://www.ncha.gov.cn/art/2017/2/27/art_2237_43663.html) (accessed on November 15, 2025)
- National Health Commission of the People’s Republic of China. (2024). 2023 statistical bulletin on the development of China’s health sector. Retrieved from <https://www.nhc.gov.cn/guihuaxxs/c100133/202408/0c53d04ede9e4079aff912d71b5131c.shtml> (accessed on November 12, 2025)
- National Healthcare Security Administration. (2025). 2024 statistical bulletin on the development of the national healthcare security sector. Retrieved from [https://www.nhsa.gov.cn/art/2025/7/14/art\\_7\\_17248.html](https://www.nhsa.gov.cn/art/2025/7/14/art_7_17248.html) (accessed on November 13, 2025)
- Su, L. Y. (2022). Survey and intervention study on the current status of intravenous infusion clinical practice in Chinese hospitals (Master’s degree thesis, Central South University, 2022).
- Supreme People’s Procuratorate. (2023). Supreme People’s Procuratorate releases typical cases from the special supervision campaign “Public interest litigation: Safeguarding a better life”. Retrieved from [https://www.spp.gov.cn/spp/xwfbh/wsfbh/202308/t20230817\\_625113.shtml](https://www.spp.gov.cn/spp/xwfbh/wsfbh/202308/t20230817_625113.shtml) (accessed on November 15, 2025)
- Wang, F. H., & Shen, J. Y. (2025). The res judicata effect of judgments in civil public interest litigation. *Journal of the National Prosecutors College*, 33(4), 51-65.
- Wang, L. M. (2002). The concept of a consumer and the scope of application of the consumer rights protection law. *Political Science and Law*, 21(2), 3-12.
- World Health Organization. (2023). Reports on patient safety. Retrieved from <https://www.who.int/zh/news-room/factsheets/detail/patient-safety> (accessed on November 13, 2025)
- Yan, J. J. (2025). The cost of one extra incision—Behind China’s first civil public interest lawsuit involving overmedicalization. Retrieved from [https://www.spp.gov.cn/spp/zdgz/202504/t20250410\\_692626.shtml](https://www.spp.gov.cn/spp/zdgz/202504/t20250410_692626.shtml) (accessed on November 13, 2025)
- Yao, J. Z. (2010). Outline of emerging rights. *Law and Social Development*, 16(2), 3-15.

- Yao, Q., Zhang, X. D., Jiao, Y. F., & Yao, L. (2025). Analysis of the main manifestations, generative mechanisms, and governance strategies of overmedicalization in China. *Chinese Health Policy Research*, 18(7), 61-69.
- Zhang, C. B. (2016). *A study on quality control in judicial appraisal of medical malpractice*. Beijing: Beijing Law Press.
- Zhang, M. (2022). A study on the legal dilemmas and solutions in judgments of overmedicalization cases. *Journal of Northwest University (Philosophy and Social Sciences Edition)*, 52(6), 50-61.
- Zhang, Y. J., & Lou, C. L. (2024). Establishing a public interest litigation framework for the protection of the rights of the digitally disadvantaged. *Journal of Tianshui College of Administration*, 25(4), 101-106.
- Zhang, Z. L. (2003). Overmedicalization: A medical issue urgently requiring comprehensive management. *Medicine and Philosophy*, 24(9), 1-4.
- Zhu, N. (2019). Reflections on the definition of cases involving overmedicalization. *Medicine and Philosophy*, 40(10), 5-9.
- Zunyi Intermediate People's Court. (2022). Actively exploring and boldly innovating: Zunyi Intermediate Court's judicial confirmation mechanism for civil public interest litigation begins to bear fruit. Retrieved from <http://zyzy.guizhoucourt.gov.cn/fyxw/244224.jhtml> (accessed on March 12, 2026)