

# Insurance Landscape for Medical Spas

## PROTECTING YOUR BUSINESS ASSETS

By Megan K. Packard, Professional Liability Solutions, LLC

legal case of the month

It is great to hear excitement in the voice of a physician talking about the medical spa/anti-aging center he/she will be opening. Usually, they call to secure the malpractice insurance for the medical spa; but when the conversation turns to other types of business insurance available many respond, "What's general liability? What's a BOP? Why do I need that?" While physicians are extremely adept clinicians, many are not schooled in the business end of running a retail medical practice. As I once heard it stated, "It takes more than hanging out your shingle to create a successful medical spa."

It is amazing how many physicians forgo all types of business insurance with the exception of malpractice. Again, this relates to lack of understanding on how to protect their

assets against risk. The response typically is, "I don't have any business assets they can take since I'm just starting my medical spa. The value is minimal." This comment amazes me. Why would anyone create something just to leave it exposed to destruction or potential loss? It's like investing the time and financial resources into building a house, then deciding the homeowner's insurance isn't worth it.

Another frequent comment I hear is, "I set up a corporation and, therefore, I'm not personally liable. They can't come after my assets." While a corporate format can protect owners, investors, and officers from the corporate liability, in many states that

protection can be pierced under certain circumstances. This, of course, varies by state; but the smaller you are (as is the case in medical spas), the more likely it is that they can come after you personally.

There's a myriad of reasons why medical spa owners do not thoroughly think through the insurance coverage.

*Whatever the reason, it serves medical spa owners well to do their homework about what types of risk they face and how to protect themselves and their business.*

A physician owner who knows only of medical malpractice insurance or the entrepreneur who doesn't realize the complexity the medical aspect adds to the business' risk. Whatever the reason, it serves medical spa owners well to

do their homework about what types of risk they face and how to protect themselves and their business. What follows is a basic guide to the essential insurance coverages.

### **MEDICAL PROFESSIONAL LIABILITY INSURANCE – “MALPRACTICE”**

Malpractice insurance protects against the liability due to the negligent acts (“direct patient care”) of the healthcare professionals in the medical spa. This is for the professional services rendered or for the failure to render services. Besides the procedures or treatments performed, direct patient care may also include making diagnoses, rendering opinions and advice, or prescribing. Too often physicians open their medical spa and assume their current malpractice policy (for their primary specialty) covers them for their work in the medical spa. This is not always the case. A plastic surgeon’s malpractice policy may cover medical spa work, while a family practice physician’s policy may not. It is important to determine where coverage exists.

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Another aspect of malpractice is to ensure that all parties involved who could potentially be named in a lawsuit are indeed covered for their medical professional services provided in the medical spa. This would include

any physicians, allied healthcare professionals, including aestheticians and licensed massage therapists, along with the corporate entity. Yes, I did say corporate entity. A lawsuit can name the medical spa in addition to the healthcare professional who treated the patient. Comprehensive policies will cover all of these aspects.

There are certain set-ups when the physician acts solely as a medical director without direct patient care. By setting the protocols and procedures to ensure quality standard of care, the physician can ultimately be responsible for any substandard care provided. There are policies that cover the malpractice claims for the physician’s administrative acts only. Comprehensive medical spa policies will include this coverage.

### **GENERAL LIABILITY – THE “SLIP ‘N TRIP”**

General Liability insures against negligent acts resulting from the operation of the medical spa or from its employees (i.e. bodily injury to patients, property damage, personal injury or advertising injury). For example, a patient visits the medical spa and trips over the rug in the reception area. She sustains bodily injury for which she can sue the medical spa. This is not a negligent act due to medical professional services; therefore, malpractice will not cover this type of claim, but a general liability policy would.

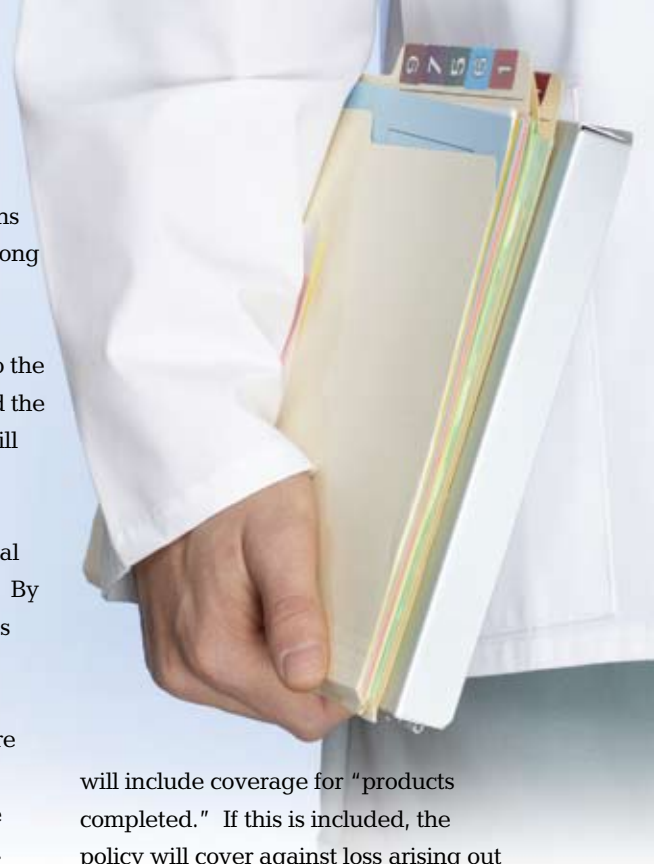
Some general liability policies

will include coverage for “products completed.” If this is included, the policy will cover against loss arising out of injury or damage resulting from a product. Many medical spas distribute and sell a variety of products. While they may not manufacture the product, liability still occurs by selling the product to the client.

### **BUSINESS PROPERTY INSURANCE – “IS YOUR LASER COVERED?”**

Property insurance provides protection against loss or damage to the location of the business and its contents. Some policies cover basic equipment (building structure, furniture, inventory, equipment, supplies), while others also insure money and securities, hard-to-replace records, such as accounts receivable. It also includes property of others that is in your care, custody, or control.

It does not matter whether the location is owned or leased. It is important to insure against loss to the items that keep the medical



spa functioning. Most spas have spent significant money in high tech equipment such as lasers. With some of these costing close to \$200,000, one mishap and the loss significantly impacts the medical spa's revenues.

The causes of loss covered by property insurance can vary from weather-related events like lightning strikes or hail, or human causes like robbery. Keep in mind that most property insurance policies do not insure against every type of loss. Specific perils, such as fire or flood, may be obtained through separate insurance policies that specifically name those types of losses.

It is important to know whether your policy covers the actual cash value ("ACV") or the replacement cost of the business property. ACV means that your property will be replaced for the current value. This takes into account depreciation. Replacement cost means that you are reimbursed for the actual amount needed to replace the piece of property in today's dollar. For example, the laser machine purchased two years ago for \$200,000 is now worth \$150,000 due to depreciation. The machine is damaged and your policy covers on an ACV basis. You would only receive \$150,000. Replacement cost would provide reimbursement for the same model in today's dollar. Replacement cost typically comes at a higher premium but is well worth it when a loss occurs.

It is advisable to insure your property for the full amount it would cost to replace all items. In the event that you experience a total loss, you do not want to discover you valued your property too low and will not get the amount it costs to replace your property. Too often medical spa owners find out the hard way that they have undervalued their business property. They may face financial difficulties as they try to replace the essential pieces to get the business functioning again.

### **BUSINESS OWNER'S POLICY – COMBINING THE GL AND THE PROPERTY**

For smaller businesses like medical spas, general liability and property insurance are often combined together in a business owner's policy ("BOP"). Typically purchasing them together is a more cost effective way to secure

insurance and can be one of the best buys for a medical spa besides the medical malpractice insurance. The BOP always consists of the general liability and the property insurance, and often includes additional aspects such as business interruption insurance.

Often a medical spa is required to name a financing company as a loss payee in the event of loss on equipment, such as a laser machine. The landlord for the medical spa location may require that they are named as additional insured or loss payee. This allows either party to receive an insurance settlement due to loss covered by the insured's policy. Again, a BOP is effective at combining both general liability and property in order to satisfy such requirements from third parties involved with the medical spa.

Business interruption insurance provides protection against loss or damage to the cash flow and profit of a business caused by some type of loss (i.e. fire or other disaster). Let's say a fire destroys your medical spa and puts the business in a temporary holding pattern while trying to rebuild or relocate. Without business interruption coverage, the medical spa cannot recoup the revenue lost during the inoperable time. Without recouping these costs, it may be impossible to pay employees and, therefore, you risk losing key personnel. Loan payments and other ongoing financial obligations do not go away. Business interruption insurance can help with such risks.



## EMPLOYEE-SPECIFIC INSURANCE – TAKING CARE OF YOUR BUSINESS PERSONNEL

Group or individual health insurance policies, and other such benefits, may be necessary in order to attract and retain top employees. As more medical spas open and competition for top personnel increases, it is essential to offer the insurance benefits that potential employees are seeking. This can help to provide a

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more competitive employment offer.

In addition to health insurance, worker's compensation insures against work related injuries and illnesses. Worker's compensation is state specific. Most states have in place some form of a worker's compensation system.

The worker's compensation system was designed to eliminate unnecessary litigation from employees against their employers for on-the-job injuries.

In return for eliminating this, some state systems mandate the employer must participate in the system which automatically pays out for medical bills and damages for work related injuries. There are many options for this type of coverage, and some states even allow employers to opt out if they self-insure.

Many on-the-job injuries are only covered by worker's compensation and not the medical group plan. It is important to follow your state's requirements for worker's

compensation so that the employees are fully covered and you are not at risk.

## EMPLOYER-SPECIFIC INSURANCE – TAKING CARE OF THE BUSINESS

In addition to protecting employees, it is often necessary to protect the business against errors in the administration of the employee benefits programs. There are also insurance policies (employment practices liability insurance) to protect the business against claims by workers that their legal rights as employees have been violated (i.e. claims of discrimination in hiring, wrongful discharge, sexual harassment, etc.).

Disability and Life Insurance protect the medical spa against the death or disability of key employees. These types of products can be used to provide funds to ensure succession in the event of changes in ownership or unexpected loss of key personnel or owners. This may be more pertinent when there are multiple partners who own the medical spa. It may also be important if the medical spa is well established and ingrained in the community with a particular healthcare provider's personality. Loss of that key person may greatly affect the success of the medical spa.

A loss or a claim can come when we least expect it. And it is hard to deny that we live in a litigious society. Everybody and every business can be sued. Once a money judgment is rendered against an individual or a business, that judgment can be collected. If it is not collected immediately, it does not just go away.

Things such as wages, equipment, and bank accounts can be seized, not to mention that judgment liens can be renewed. In addition, destruction to and loss of business property can happen any time.

With this in mind, is your medical spa adequately protected against potential loss or claims? As a business owner, only you can decide what is most important. But before you can make that decision, you must be educated on what risks you face and what options are available to protect you and your medical spa. ❏



**Megan K. Packard** is the Executive Vice President for Professional Liability Solutions, LLC, an independent

agency that specializes in providing personalized, comprehensive insurance and risk-management solutions for healthcare professionals. With offices in both Charlotte and Chicago, Professional Liability Solutions has been helping healthcare professionals protect their practices and assets for over 15 years. Megan works from the Charlotte office, where she focuses her business on the medical spa, aesthetic, anti-aging, and wellness segments of the healthcare industry. Megan received her degree from the University of Virginia. She can be reached by calling 800.372.3268, [www.professionalliabilitysolutions.net](http://www.professionalliabilitysolutions.net), or by emailing her at [mpackard@pls-medmal.com](mailto:mpackard@pls-medmal.com).