



Coverage for Medical Spa Liabilities

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As the lead article makes clear, there are liability risks when providing medical spa services, as well as in supervising or directing medical spa services and in owning and operating medical spas. The OMIC professional liability policy and broad regulatory protection policy cover some of these risks, but not all. Therefore, it is imperative to operate within OMIC's coverage provisions or secure additional coverage elsewhere.

Medical Malpractice: Ophthalmologists

The OMIC policy (Coverage Agreement A) covers ophthalmologists for their direct patient treatment as long as it is within the ordinary and customary scope of practice of ophthalmologists and not specifically excluded within the policy language or by endorsement. Insureds who have limited their practice and are in a coverage classification other than full surgery (Surgery Class 3) must carefully check the wording of the endorsement pertaining to their class to ensure that the medical spa treatments they are performing are covered under their class. For example, to perform skin rejuvenation/tightening using radio frequency, one must be in Surgery Classes 2 or 3. However, Surgery Class 1 physicians may perform injections of Botox or collagen and other fillers. Your underwriter can provide a list of typical medical spa procedures and their minimum coverage classification requirements.

Medical Malpractice: OMIC-Insured Medical Spas, Directors, and Owners

OMIC offers coverage to medical spas under Coverage Agreement C, subject to underwriting review and approval. A specific medical spa application form is required and the facility must abide by OMIC's underwriting requirements

in order to be eligible for coverage. Coverage is available only for medical spas that are located within the owner's ophthalmic practice or in the same building, and OMIC insureds (and immediate family) must hold at least 50% of the ownership. If the medical spa is an insured entity, then any persons affiliated with the medical spa as members, officers, directors, partners, or shareholders, including as medical directors, supervising physicians, or prescribing physicians (collectively "directors and owners"), will also be covered, but only in their capacity as directors and owners.

Coverage Agreement C covers claims against the spa and directors and owners for direct patient treatment attributed to the entity itself (occurring, for example, if the entity's policies or procedures lead to the injury), as well as professional committee activity claims against its directors and owners (e.g., negligent credentialing of the utilizers of the medical spa). It also provides vicarious liability for the entity and its directors and owners, but only when the person for whom the spa, director, or owner is being held responsible was acting within the scope of his or her licensure, training, and professional liability insurance coverage, if applicable. As Betsy Kelley points out in her article, it is imperative that medical directors and owners understand the licensure requirements for the various medical spa treatments offered at their facilities.

Medical Malpractice: Non-Insured Medical Spas, Directors, and Owners

OMIC's policy specifically excludes coverage of an insured acting as a "medical director, supervising physician, or prescribing physician of a medical spa, not named in the Declarations." This means that if the medical spa is not listed on the Declarations, the insured ophthalmologist is not covered for liability as a medical director of the spa, even though he or she is insured for direct patient treatment rendered at the medical spa.

Medical Malpractice: Ancillary Staff

Ancillary staff who provide services at medical spas, such as aestheticians, aesthetic nurses, and RNs, are covered by OMIC only if the employing physician or medical spa is named on the Declarations (Coverage Agreement B). Even if OMIC insures a physician owner of a non-OMIC-insured medical spa, there is no OMIC coverage for ancillary staff employed by the medical spa. Such ancillary staff employees should make sure the medical spa's non-OMIC professional liability insurance covers them. Under the OMIC policy, ancillary staff members have direct liability coverage only if they are acting within the scope of their training, licensure, and employment by and for the direct benefit of the employing insured named on the Declarations. Not only does the coverage agreement require appropriate licensure, there is also a specific exclusion that excludes coverage for direct patient treatment by any health care providers who don't hold the required licenses, certifications, or accreditations to provide the services in question.

Licensure Actions

OMIC's policy also provides defense-only coverage (paying up to \$25,000 in legal fees) for any investigation, disciplinary proceeding, or action for review by a regulatory agency, such as the medical board, arising from a patient complaint of an injury resulting from the insured's direct patient treatment at a medical spa or elsewhere. This coverage does not include any fines or penalties and doesn't cover investigations based on other people's actions. This coverage is only for ophthalmologists and would not protect nurses or other licensed staff being investigated for scope of practice violations. If an injury to a patient is not alleged, but a licensing proceeding is instituted against the ophthalmologist by a state licensing authority, the OMIC Broad Regulatory Protection Policy will cover legal expenses for the investigation up to \$25,000 (with a \$1,000 deductible).