

# OMIC DIGEST

Ophthalmic Risk Management Digest

## MESSAGE FROM THE CHAIRMAN



**No area of ophthalmology** is more controversial and difficult to underwrite than oculoplastic and oculofacial procedures. For this reason, OMIC has always had an oculoplastic specialist involved in making coverage decisions on what I will refer to here as "cosmetic" procedures. This includes past

Underwriting Committee chair, Michael J. Hawes, MD. Additionally, OMIC has maintained an ongoing educational cooperative venture with the American Society of Ophthalmic Plastic and Reconstructive Surgery since 1998. Thus, we feel very confident in our ability to assess the liability risks of ophthalmologists who perform cosmetic procedures and to establish the underwriting guidelines and requirements to minimize these risks. We believe it is because of these guidelines that we have a record of low frequency and severity of cosmetic surgery related claims.

Historically, these procedures were usually performed by oculoplastic specialists on established patients in a medical office or surgery center. With storefront medical spas now cropping up in malls and on street corners, patients can walk in and have laser hair removal,

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## Facials, Fillers, and Physicians: Keeping the "Medi" in Medi-Spa

By Betsy Kelley  
OMIC Vice President of Product Management

**U**ndercover officers in Florida find an unlicensed cosmetologist injecting Restylane and another unlicensed individual performing sclerotherapy at a medical spa. The patients are not seen by a physician, nor are medical exams conducted. The cosmetologist is arrested for the unlicensed practice of medicine and possession of legend drugs with intent to dispense. The medical director is disciplined by the medical board, including a letter of concern, fine, and mandatory community service.<sup>1</sup>

Another doctor takes over as medical director of a North Carolina medical spa. Before reviewing the spa's policies and practices, he authorizes the compounding pharmacy to continue supplying a numbing gel used with laser hair removal. Within one month of the doctor's hiring, a 22-year-old college student dies of poisoning after using the lidocaine she had received from the pharmacy in anticipation of her treatment. The medical director's license is suspended for six months for failing to ensure that the prescription gel was properly dispensed.<sup>2</sup> The former medical director is also charged with unprofessional conduct for setting up the protocols that allowed the clinic to dispense the gel without individual prescriptions and for failing to train staff in its use.<sup>3</sup> The resulting wrongful death lawsuit from this case settles for policy limits against each of the multiple defendants.

These publicized incidents illustrate some of the risks physicians take when they establish or agree to serve as medical directors or supervising or prescribing physicians for a medical spa. Physicians must educate themselves about the risks associated with these facilities in order to reduce their likelihood of liability claims, licensure actions, or other adverse consequences. By understanding and addressing these exposures, physicians can not only better protect themselves but also improve patient safety.

Now is the best time to act on this issue. Medical spas are the fastest-growing segment of the spa industry, increasing from 400 medical spas in the United States in 2004 to more than 2,000 by 2007.<sup>4</sup> This number will continue to rise. While fewer patients are seeking elective surgery as a result of the economic downturn, many are turning to less expensive substitutes. Patients who previously would have undergone a facelift are now more likely

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# Eye on OMIC

## OMIC

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## OMIC, AAO Urge Use of Updated Patient Information Materials

Out-of-date patient information materials and informed consent documents can increase the risk of a medical malpractice suit. That's the message of a long-term joint effort underway between OMIC and the American Academy of Ophthalmology to ensure that ophthalmologists use the most current patient education and risk management materials in their practices. The initiative kicked off with an OMIC blast email in January and an *Academy Express* article in February reminding members and insureds to visit the Academy web site for a full line of peer-reviewed patient education materials and the OMIC web site for the most current informed consent documents.

"OMIC and the Academy have a long history of partnering on topics related to patient education and risk management documentation," said Chairman Richard L. Abbott, MD, who is heading up OMIC's efforts in the project.

### Message from the Chairman

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microdermabrasion, and other cosmetic procedures performed on the spot. Needless to say, this makes the underwriting process more challenging than when it simply involved individual ophthalmologists offering cosmetic procedures to their own patients in their own office or clinic.

Because cosmetic procedures are not generally included in ophthalmology residency programs, OMIC must verify that an applicant is qualified and has received the proper training to perform such procedures. Applicants are asked to provide information on the number of procedures they will perform annually, the areas of the body they will treat, the venue where they will provide these procedures, and their advertising of these procedures, if any. Applicants agree to abide by OMIC's underwriting requirements and to inform us of any changes to their application responses. When OMIC is reasonably confident that the insured intends to offer these services in an ethical and professional manner with appropriate informed consent and preserve patient safety, coverage for cosmetic services will usually be approved.

"The importance of documentation to prevent or minimize the impact of a malpractice lawsuit or claim cannot be overstated. OMIC defense attorneys constantly stress that documentation in the medical record will help demonstrate to a jury that the patient understood the risks, benefits, and alternatives of a procedure or course of treatment. Better documentation helps defend a malpractice claim."

Dr. Abbott will participate in an Academy sponsored course on this topic at the Annual Meeting. "Why Take the Risk? An effective risk management strategy with current patient education and informed consent documents" will be held Monday, October 26, at 12:45 pm.

The joint campaign will conclude the year with a Patient Education Checkup Week in December to encourage Academy members and OMIC insureds to reduce their malpractice risk in the new year by conducting an audit of their patient education and informed consent documents and replacing outdated forms with current ones.

The issue of where cosmetic procedures are rendered first arose in 2002 following FDA approval of cosmetic Botox. OMIC began to receive inquiries as to whether spas or even house parties were acceptable venues for injections. OMIC has been very clear that medical treatments such as Botox need to be provided in settings that have proper medical equipment and personnel.

"Medi-spas" present a hybrid environment that is not quite a medical office or clinic, but is more than a simple spa giving massages and facials. To further complicate matters, ophthalmologists may have an ownership interest in the medi-spa and/or serve as its medical director. Coverage for the liability risks associated with medi-spas may only be extended after an OMIC insured has completed a 10-page questionnaire. Failure to honestly complete this underwriting process puts the insured at risk of not being covered should a claim arise.

As long as ophthalmologists continue to expand their scope of practice, OMIC will continue to cover what they do and will work with insureds to carefully integrate new procedures into their practice with patient safety as the top priority.

**Richard L. Abbott, MD**  
OMIC Chairman of the Board



## Coverage for Medical Spa Liabilities

By Kimberly Wittchow  
OMIC Legal Counsel

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).

# Facials, Fillers, and Physicians

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to select skin resurfacing procedures, injections of fillers or Botox, or chemical peels as a more cost-effective alternative. And the lower cost of obtaining these services from non-physician personnel makes medical spas even more attractive. It's not only patients who are drawn to medi-spas; seeking ways to supplement their declining revenues, some physicians may feel compelled to set up or expand their own medical spa business.

## What is a Medical Spa?

A medical spa is a facility that provides a variety of aesthetic medical procedures and traditional spa therapies under the supervision of a physician, generally in a spa-like setting. The spa may be located within a physician's office, within the physician's medical building, or in a stand-alone setting. Medical spas may be physician-owned, or depending upon—or in violation of—state laws and regulations, they may be owned by entrepreneurs or franchises. Typically, services are rendered by aestheticians, nurses, or other allied health care professionals under the supervision of a physician who may or may not be on site.

## Know the Laws

Although many states do not specifically regulate medical spas, all facilities where medical care is rendered are subject to the same laws and regulations as health care facilities, including those pertaining to corporate ownership and scope of practice. Corporate practice-of-medicine laws determine who must own or supervise the practice, and regulatory boards establish to whom certain activities can be delegated and under what circumstances. Some states may also require that the facility be licensed or certified by the state in which it operates. Other regulations may dictate facility and equipment requirements such as water, restroom, and health and safety requirements. Nonetheless, experts opine that most medical spas today operate in ignorance or violation of these laws and regulations.

Even well-intentioned, law-abiding physicians find scope-of-practice laws complex and confusing, in part because scopes of practice vary widely. Obviously, scope of practice varies among types of licensees within a given state. Physicians moving to a different state may not expect significant differences from state to state for a specific type of licensed practitioner. To make matters worse, different agencies within the same state may take opposing positions. For example, according to the Alabama Board of Cosmetology, a cosmetologist or aesthetician can inject Botox and dermal fillers under the supervision of an on-site physician. However, that state's medical board has ruled that cosmetic injections are the practice of medicine and must be performed by a licensed physician. Therefore, while it appears that an Alabama cosmetologist who performs such services under the direction and supervision of a physician would not be sanctioned by his or her licensing board, the supervising physician could be charged with unprofessional conduct and be subject to disciplinary action. When conflicts such as these exist, it would be prudent for the physician to adhere to the most restrictive regulations (see the **Hotline** for recommendations on how to safely make delegation decisions).

To protect public safety, and provide guidance to practitioners, regulatory boards in some states have established policies clearly defining their position. For instance, several nursing boards have developed policy statements or protocol guidelines regarding aesthetic cosmetic procedures. Other state boards make determinations on a patient-by-patient basis, or provide advice specific to each provider based upon the provider's training, skills, and experience. Some counsel nursing staff to follow a decision model to determine whether a particular procedure falls within their legal scope of practice. Others indicate that

scope of practice determinations will not be made until or unless a complaint against the provider has been filed and even then will depend upon the specific facts of the case.

Managing scope of practice issues is even more complex when one considers that regulations are continually in a state of flux, and new regulations that expand or restrict scope of practice can be passed at any time. Ignorance of local, state, and federal laws and regulations, however, is not an acceptable defense, and failure to abide by them can result in fines, other disciplinary action, or suspension or revocation of licensure. Therefore, it is important for physicians who associate themselves with a medical spa to personally research the applicable requirements and to ensure that the facility is in full compliance. Consult with each of the nursing, cosmetology, physician, and other professional boards as applicable in your state for final governance rules. Establish a policy to review scope of practice laws on a routine basis, perhaps annually or biannually.

## Supervision Required

By definition, medical care is part of the practice of medicine, and must be provided by or under a physician's supervision. This is true regardless of where the care is provided. Thus, while many medical services provided at medical spas can legally be performed by certain types of qualified non-physician personnel, the supervising physician's role must be evident. First, the physician must generally prescribe or order medical treatments (see the **Hotline** for assistance in distinguishing medical treatments that need a physician's order from cosmetic procedures). In some situations, the physician may also be required to assess and evaluate the patient before ordering the treatment. Ultimately, the supervising physician is responsible for the patient and could be held liable for any legal/regulatory violations and patient injuries that occur.

Before procedures can be delegated to non-physician personnel, the supervising physician has a duty to assess the health care provider's qualifications. The physician should have direct knowledge of each individual's licensure, training, certification status, knowledge, and experience in each procedure the provider will perform. In addition, the physician should verify that the procedure falls within the provider's legal scope of practice (licensed staff) or services (unlicensed assistive personnel). No procedure should be delegated to a provider who has not satisfactorily demonstrated current competency in the necessary skills.

In order to adequately supervise the health care providers, the supervising physician must also be competent in each procedure that is performed at the medical spa. Many states have passed laws or regulations stipulating that the supervising physician have the knowledge, skill, and ability to personally perform each procedure. Some states further require that the physician actively perform such procedures in his or her practice.

The minimum level of supervision legally required while the treatment is being rendered varies from state to state and also depends upon the professional designation of the provider who will render services. In some situations, the physician may be required to be in the same room at the time services are rendered; in others, it may be acceptable for the doctor to be elsewhere in the building. In the case of licensed health care providers, the regulatory board may allow the physician to be "readily available," to be physically available within a specified time frame, or to simply be available by telephone. To increase patient safety, minimize liability exposure, and reduce the possibility of disciplinary action for failing to properly supervise non-physician staff, a qualified physician should be available on site whenever medical services are performed. In addition, the supervising physician

should routinely review, date, and sign the medical records. Written protocols clarifying the role and responsibilities of the physician and of non-physician employees will aid in the appropriate delegation of services. Such protocols also provide supporting documentation of the supervision extended should a complaint be filed.

### Treat Medical Procedures as Medical Procedures

Members of the public often believe that procedures rendered at medical spas are cosmetic services with guaranteed results rather than medical procedures with risks; they are misled both by having the services provided by non-physician personnel in non-clinical settings and by brochures and advertisements. It is not surprising, then, that patients often fail to understand the risks involved, have unrealistic expectations, and become dissatisfied if complications or side effects occur.

Clients should be treated as patients, and treatments should be handled as the medical procedures they are, regardless of whether services are rendered in a spa or clinical setting, or performed by a physician or allied health care provider. Practically speaking, this means that HIPAA regulations are respected, and a qualified health care provider or physician obtains and documents a medical and medication history and performs a physical examination of each patient before a physician orders treatment. As with any other medical procedure, an informed consent discussion is held with each patient prior to treatment and the patient signs a consent form documenting understanding of the treatment goals and risks. Medical records are maintained that document the initial assessment, course of treatment, informed consent, and postoperative care rendered.

Just as in hospitals, surgery centers, and physician offices, medi-spa facilities and staff would be wise to expect and be prepared for the

unexpected. While uncommon, serious medical complications and emergent conditions may arise coincident to or as a result of the procedure. Patients have suffered serious burns from laser procedures performed at medical spas and life-threatening allergic reactions to medications. Supply the medical spa with the medical personnel and equipment necessary to monitor patients and deal with any potential complications that may occur. To ensure that patients can obtain prompt emergency care, establish a written transfer agreement with the nearest acute care hospital and train staff on how to respond to an emergency.

Medical spas represent a new source of liability exposure, but the informed physician can minimize risk and improve patient safety by complying with scope of practice and other laws and regulations, providing the appropriate level of supervision, and recognizing that the services rendered are medical procedures subject to the same guiding principles as other medical services.

1. State of Florida Department of Health, DOH Case No. 2007-08728.
2. Avery S. "N.C. board suspends spa doctor." *The News & Observer*, September 9, 2005. Retrieved April 21, 2009 from [http://www.newsobserver.com/news/health\\_science/medical\\_spas/story/332572.html](http://www.newsobserver.com/news/health_science/medical_spas/story/332572.html).
3. Shimron Y. "Doctor linked to numbing-gel death reaches deal." *The News & Observer*, August 16, 2007. Retrieved April 21, 2009 from [http://www.newsobserver.com/news/health\\_science/medical\\_spas/story/672197.html](http://www.newsobserver.com/news/health_science/medical_spas/story/672197.html).
4. "Deadly Beauty Treatments." *In Prevention*, March 8, 2007. Retrieved April 21, 2009 from [http://www.prevention.com/cda/article/deadly-beauty-treatments/46d268f271903110VgnVCM10000013281eac\\_\\_\\_/lifelong.beauty/anti.aging.arsenal/cosmetic.procedures](http://www.prevention.com/cda/article/deadly-beauty-treatments/46d268f271903110VgnVCM10000013281eac___/lifelong.beauty/anti.aging.arsenal/cosmetic.procedures).

Contact the following resources for additional information about medical spas:

The International Medical Spa Association, [www.medicalspaassociation.org](http://www.medicalspaassociation.org).

"The Bottom Line: The Business of Medicine—Medical Spas," Medical Board of California, [http://www.medbd.ca.gov/licensee/medical\\_spas-business.pdf](http://www.medbd.ca.gov/licensee/medical_spas-business.pdf).



# Closed Claim Study

## Cosmetic Treatment by Technician Results in Fine and Suspended License for Medical Director

By Ryan Bucsi, OMIC Senior Litigation Analyst

### ALLEGATION

Negligent supervision of unlicensed staff performing laser skin resurfacing.

### DISPOSITION

Lawsuits were settled on behalf of the OMIC insured for a collective \$48,750. Insured was fined \$35,000 and his license suspended for aiding and abetting the unlicensed practice of medicine.

### Case Summary

In two separate cases occurring one week apart, patients received Intense Pulse Light (IPL) treatment from a technician in a medical spa. Following treatment, each patient complained of being burned. The spa returned the money in both cases and even compensated one patient for her missed time from work. Nonetheless, they sued the OMIC-insured ophthalmologist in his role as medical director of the spa even though he had not been present at either procedure.

### Analysis

The ophthalmology expert who reviewed this case testified that one of the patients had experienced normal skin darkening that was likely to improve. The other patient was a smoker with prior skin damage from the sun and no new injury. While the expert concluded that the patients were not harmed, he shared the plaintiffs' concerns about the delegation process. First, he noted that neither the insured nor another physician documented a pre-treatment exam or the reasons for recommending IPL. Next, the expert could not find an order for the technician to perform the treatment, a protocol defining treatment parameters, or an indication from any physician of subsequent examinations. As the medical records contained only documentation by the technician, the expert concluded that the technician made treatment decisions and performed the IPL sessions without supervision. Delegation of such authority for medical decision-making, he opined, was below the standard of care.

The insured initially disagreed with the review and reported that regardless of the laws and regulations, it was quite common for physicians he knew to designate a "range of therapy" for IPL treatments. Based upon the technician's training and skills, she had been granted the discretion to adjust the IPL power up or down within that range in order to achieve the desired result. The insured also did not feel that his presence was required for these treatments as they were routinely performed by technicians in his area. He acknowledged, however, that his

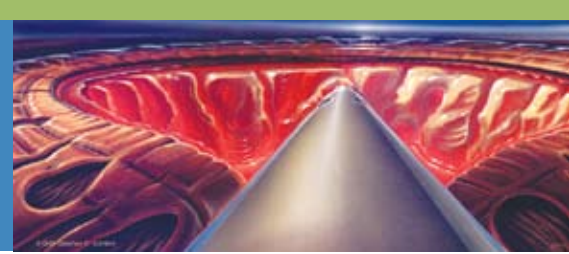
medical board had already determined that such delegation was illegal. Moreover, the expert reported that he was always physically present on site in his own practice when IPL procedures were being performed by his technicians. The insured was certain that written consent for at least one of the procedures had been obtained; however, the consent document could not be located and there were no documented risk/benefit discussions.

### Risk Management Principles

Experts base their review of malpractice claims upon the standard of care—reasonable prudence—not the "standard of the community." Attorneys remind physicians, moreover, that ignorance or violation of laws and regulations may make a case indefensible, even if the care was properly rendered and there were no injuries. The physician remains liable for damages sustained by patients cared for by his staff and under his supervision, even if he has properly delegated, trained, and supervised the staff. If the cause of the injury cannot be attributed to the staff or equipment, the indemnity payment is made on behalf of the physician, not the practice, as happened here. In compliance with federal and state law, the payments made on behalf of the OMIC insured were reported to the National Practitioner Data Bank and the state board and were available to health care facilities performing credentialing reviews. The state board levied a \$35,000 fine and suspended the insured's medical license. This fine was not covered by the OMIC insurance policy since the insured's role was limited to being the medical director of a non-OMIC insured spa.

As this case indicates, a cosmetic procedure with seemingly minor clinical risks may end up causing severe consequences for the physician. Protect yourself if you are delegating medical procedures. Know your state laws. Ensure that you are competent to perform a procedure yourself prior to training non-physician personnel to perform it. Keep files with evidence of adequate training, competency evaluations, and protocol development and review. For each patient, evaluate the necessity of a procedure, and write an order for staff to perform the procedure, including treatment parameters. Document the informed consent discussion and ask the patient to sign a procedure-specific consent form. See the **Hotline** article in this *Digest* for information on what can be delegated.

# Risk Management Hotline



## What May I Safely Delegate?

By Anne M. Menke, RN, PhD  
OMIC Risk Manager

**T**he “practice of medicine” is defined in each state’s medical practice act and clarified in regulations. Sometimes, even after researching state laws and regulations, you may not be sure of what medical tasks you may delegate to non-physicians. The official curriculum provided at the school where the employee trained is a good indication of normal scope of services or practice of that employee. However, state law may preempt those qualifications or experience if the employee trained out of state. Use the training, licensure/certification process, state law, and the principles discussed in this article to develop protocols that will keep you, your patients, and your staff safe, and improve the defensibility of care rendered under your supervision.

**Q** What distinguishes a cosmetic from a medical procedure?

**A** Are estheticians (skin care therapists) trained to perform this procedure in esthetician schools? May they perform the procedure in a salon that has no affiliation with a physician? If the answer to both questions is yes, the treatment is probably a cosmetic one with few or minimal patient safety risks. On the other hand, if the device needed to perform the procedure may only be purchased by a medical doctor (MD) or doctor of osteopathy (DO), or if the product is labeled as a drug by the FDA, the treatment is a medical one with risks that must be disclosed, recognized, and mitigated. If not performed by a physician, it must be ordered, delegated, and supervised by a physician.

**Q** May I delegate prescriptive authority to my staff?

**A** Each state limits the ability to write prescriptions to certain licensed health care personnel and provides a “sliding scale” of authority. MDs and DOs are at the top of the scale; with the proper Drug Enforcement Agency (DEA) approval for controlled substances, they have unlimited prescriptive authority to order FDA-approved drugs and devices. All other licensed health care providers have restrictions. Others with prescriptive authority and likely to be in an ophthalmology practice include physician assistants and nurse practitioners. They may prescribe only medications normally used by their supervising physician that are also listed in the formulary that comprises part of the standardized protocols directing their actions. If the standardized protocol addresses drugs such as injectables, and the drugs are in the formulary, physician assistants and nurse practitioners may prescribe and administer them, as well as supervise staff who are qualified to administer them. In some states, optometrists with special training and licensure have limited prescriptive authority, but it would not include these drugs and devices. While registered nurses are licensed, they have no prescriptive authority. Like unlicensed ophthalmic personnel, their role is limited to implementing orders or transmitting them to a pharmacy or health care facility. In offices with no physician assistant or nurse practitioner, therefore, only an ophthalmologist may prescribe drugs such as injectables.

**Q** Who may determine if a patient is a candidate for a medical procedure?

**A** It takes considerable knowledge and judgment to determine the cause of presenting complaints, what if any treatment is indicated, and whether the findings from the patients’ history or examination signal increased risk or constitute contraindications. In other words, assessing patients to determine

treatment is the practice of medicine. Registered nurses are trained in nursing school and then licensed to perform assessments of patient conditions, interpret orders and test results, implement treatment orders, and make ongoing decisions about how to modify procedures as needed based upon the patient’s condition. Nearly all states also have legal mechanisms for registered nurses to perform tasks that are considered the practice of medicine, such as Botox injections and some types of laser surgery. With sufficient training and the appropriate standardized protocols that delineate indications, contraindications, treatments, and consultation requirements, registered nurses may usually elicit the history, perform the initial examination, and discuss a proposed course of treatment with the patient as a prelude to presenting their recommendations to the supervising physician. If the physician approves the patient’s candidacy and orders the treatment or series of treatments, the registered nurse may implement the order.

**Q** What may I delegate to unlicensed ophthalmic personnel?

**A** Does the state’s medical practice act define laser procedures as the practice of medicine or surgery? Does performing the procedure require the staff member to assess the patient’s condition or make modifications from one patient to the next? If the answer to either of these questions is yes, the procedure is best performed by a licensed health care staff member. Did the school at which the staff member studied include the procedure in the official curriculum? Is the procedure included in the tasks for which the staff member can receive JCAHCO certification? If yes, then it is probably safe to delegate the task and supervise the unlicensed staff member if you or another ophthalmologist determines candidacy and orders the treatment for the specific patient each time it is administered.

# Calendar of Events

OMIC will continue its popular risk management programs this summer. Upon completion of an OMIC online course, CD or MP3 recording, or live seminar, OMIC insureds receive one risk management premium discount per premium year to be applied upon renewal. For most programs, a 5% risk management discount is available; however, insureds who are members of a cooperative venture society (indicated by an asterisk) may earn an *additional discount* by participating in an approved OMIC risk management activity. Courses are listed below and on the OMIC web site, [www.omic.com](http://www.omic.com). CME credit is available for some courses. Please go to the AAO web site, [www.aao.org](http://www.aao.org), to obtain a CME certificate.

## Online Courses (Reserved for OMIC insureds/No charge)

- Documentation of Ophthalmic Care
- EMTALA and ER-Call Liability
- Informed Consent for Ophthalmologists
- Ophthalmic Anesthesia Liability
- Responding to Unanticipated Outcomes

Contact Linda Nakamura at (800) 562-6642, ext. 652, or [lnakamura@omic.com](mailto:lnakamura@omic.com) for questions about OMIC's risk management programs or to register for online courses.

## CD Recordings (No charge for OMIC insureds)

- **NEW!** *Lessons Learned from Settlements and Trials of 2007 (2008)*. Also available as a downloadable file.
- *Medication Safety and Liability*
- *After-Hours and Emergency Room Calls*
- *Lessons Learned from Trials and Settlements of 2006*
- *Lessons Learned from Trials and Settlements of 2005*
- *Lessons Learned from Trials and Settlements of 2004*

To download CD order forms, go to [www.omic.com/resources/risk\\_man/seminars.cfm](http://www.omic.com/resources/risk_man/seminars.cfm).

## Upcoming Seminars

### July

- 12** *Difficult Physician-Patient Relationships*  
Florida Society of Ophthalmology\*  
Hyatt Coconut Resort, Bonita Springs, FL  
Time: 7:00–8:00 am  
Register with FSO at [www.mdeye.org](http://www.mdeye.org)
- 14** *Difficult Physician-Patient Relationships*  
American Society of Ophthalmic Plastic & Reconstructive Surgery\*  
Ritz Carlton Laguna Niguel, Dana Point, CA  
Time: 10:00–11:00 am  
Register with the ASOPRS at <http://www.asoprs.org/home.cfm>

- 18** *Challenging Physician-Patient Relationships*  
Georgia Society of Ophthalmology\*  
Ritz Carlton, Amelia Island, FL  
Time: 11:30 am–12:30 pm  
Register with GSO at [www.ga-eyemds.org](http://www.ga-eyemds.org)
- 24** *Difficult Physician-Patient Relationships*  
Southeast Regional Annual Meeting includes Alabama Academy of Ophthalmology,\* Louisiana Ophthalmology Assn,\* Mississippi Eye, Ear, Nose & Throat Assn,\* and Tennessee Academy of Ophthalmology\*  
Grand Sandestin Hotel, Destin, FL  
Time: 7:00–8:00 am  
Register with ALAO at [www.alabamayedoctors.com](http://www.alabamayedoctors.com)

- 29** *Documentation of Ophthalmic Care*  
National Medical Association Annual Meeting  
Mandalay Bay Resort & Casino, Las Vegas, NV  
Time: 11:00 am–2:00 pm  
Register with NMA at [www.nmanet.org](http://www.nmanet.org)

### September

- 13** *Difficult Physician-Patient Relationships*  
North Carolina Society of Eye Physicians & Surgeons and South Carolina Society of Ophthalmology  
Myrtle Beach Marriott Resort, Grande Dunes, SC

Time: 8:20–9:00am  
Register at [ncoph@ncmedsoc.org](mailto:ncoph@ncmedsoc.org) or [www.sceyemd.org](http://www.sceyemd.org)

- 24–26** *Difficult Physician-Patient Relationships*  
Table Rock Regional Meeting Roundup includes Arkansas Ophthalmological Society,\* Kansas Academy of Eye Physicians and Surgeons,\* Missouri Society of Eye Physicians and Surgeons,\* and the Oklahoma Academy of Ophthalmology\*  
Big Cedar Lodge, Ridgedale, MO  
Time: TBA  
Register at [www.tablerockroundup.org](http://www.tablerockroundup.org) or call (501) 224-8967

- 25** *Difficult Physician-Patient Relationships*  
Contact Lens Association of Ophthalmologists\*  
Hyatt Regency Montreal, Quebec, Canada  
Time: TBA  
Register with CLAO at [www.claao.org](http://www.claao.org)

### TBA Fall 2009

*Lessons Learned from Settlements and Trials of 2008*  
Annual Nationwide Audiocourse  
Contact Linda Nakamura at (800) 562-6642, ext. 652, or [lnakamura@omic.com](mailto:lnakamura@omic.com). Free to OMIC insureds; \$60 for non-OMIC insureds

# OMIC

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