liability issues

THE TWO MOST COMMON QUESTIONS I am asked by all kinds of spas these days are: “How much does a typical insurance policy cost?” and “How do I handle the insurance if I bring an independent contractor in?” These issues are critical to the success of every spa.

There is no such thing as a “typical insurance policy” for a medical esthetic professional. The policy should be customized to meet the needs of your business. It stands to reason that your competitor is not offering the same exact services as you, or that they have set up their business the same way you have. If this were the case, there would be nothing but franchised spas and “typical policies” to go with them.

For instance, you may have gone out and purchased a top of the line laser that offers many different modalities, while the spa down the road has an older laser that limits what they can do, and another one around the corner has no laser at all. Your insurance policy will look nothing like theirs. Having a laser means higher property limits to cover physical damage such as fire and theft. As for liability, you will need broader coverage to ensure that all of the different services you can offer with the laser are properly covered. Since a laser service presents higher risk, many spas that offer it opt for higher liability limits, while a competitor working with a LED might choose a lower limit of coverage.

For this reason, it is impossible to give an indication of what a typical insurance policy will cost. It is best to talk with your insurance broker and explain what types of coverage you are looking for to get a realistic estimate. Then you should establish a budget based on that information and what you are able to pay.

Dare I say that the economy seems to be improving? Many spas are adding more services and technicians. The concept of having at least one independent contractor to offer additional services to the regular practice is growing in popularity. An independent contractor can reduce overhead, but still expand the spa menu so the facility stays up to date with current trends and comes across as a “happening” place.

The next decision you need to make is about who carries the insurance for the independent contractor.

Most, if not all, medical malpractice policies will refuse to extend coverage to a non-medical professional acting as an independent contractor within a medical spa facility. There are two options to consider for the insurance of an independent contractor:

OPTION #1: The spa owner carries the insurance on the independent. This way, the spa owner owns the policy if the contractor leaves, and it can be adjusted for any replacement person. By owning the policy, the spa owner can always guarantee that the limits are correct, the coverages are adequate and the policy stays in force and is not cancelled for non-payment. The downside to this option is that there is a claims history on your business should the independent have a loss. In this case, the policy owner is responsible for overseeing the handling of the claims with the insurance carrier, which might be a plus. A practitioner needs to confirm that they are indeed on the spa owner’s policy, and should not just take their word for it. In a lawsuit, the spa and therapist can both be named.

OPTION #2: The independent purchases the policy. This is the option many spa owners select. However, this may not properly protect the spa owner unless the independent lists them as “additional insured” on their policy and provides you with a certificate of liability insurance. This certificate should ensure

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The doctor assumed her medical malpractice carrier would cover it. They did not. The salon owner assumed the doctor had coverage that would protect her salon. She did not. The doctor is no longer with the salon, and the two parties are involved in a legal dispute. Both could end up paying the woman who had the miscarriage out of pocket, not to mention all the legal costs they will each have to cover.

If you decide to bring in a nurse to perform procedures—or if you are a nurse yourself—you cannot assume that a standard nursing policy will provide coverage for cosmetic procedures in a non-medical setting. Also, a standard nursing policy is not appropriate if you own a facility and are trying to cover it. It is a common misconception among nurses that if they have no insurance they will not be sued. This is, of course, incorrect. An attorney will name everyone in a lawsuit, and the courts will figure out who is liable should a loss occur. Once a person or entity is named in a lawsuit, they have to hire an attorney to represent them.

A low priced nursing policy typically assumes that the nurse is working for a doctor in a traditional medical center. This would not be the case for a nurse who is working in or running a medical spa. Being a business owner or offering spa services is not the same as assisting a medical professional.

In an incident in which a nurse referred a cosmetic client to a physician to have a blephoplasty, the physician caused injury to the client’s eye, resulting in impaired vision. The doctor did not have a medical malpractice policy in force, so the insured nurse was brought into the claim because she had referred the client. The policy paid out $100,000. The physician kicked in $25,000 out of his own pocket. It is unlikely that this would be covered under a traditional nurse’s malpractice policy.

An additional issue of concern is that a medical spa business is usually not covered under the doctor or nurse’s policy. A medical malpractice policy is—in almost all situations—issued in the name of the physician or nurse, not the facility. This provides protection should the physician or nurse be named in a lawsuit, but typically does not cover the facility, the owner of the spa or non-medical personnel working under the medical professional.

In another incident, a medical spa guest who had a microdermabrasion treatment on her face made a claim. Six days after the service, the client went dirt bike riding and got pieces of gravel stuck in her face. Her face had not properly healed, and she ended up with a staph infection. She sued the medical spa, saying the microdermabrasion had made the layers of her skin thinner, which caused the infection. The carrier paid out $28,000. Since it is impossible to control what your client will do following a procedure, you may be liable if an injury occurs. In this case, the business was sued and their carrier paid the claim.

It is crucial to understand your insurance policy, rather than try to save a few dollars by cutting coverage or just assuming that you have the correct coverage in place. It is a common misconception that a standard nursing policy will provide coverage for cosmetic procedures in a non-medical setting.

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