

Miscellaneous Healthcare Spotlight

The Risk of Pampering Oneself

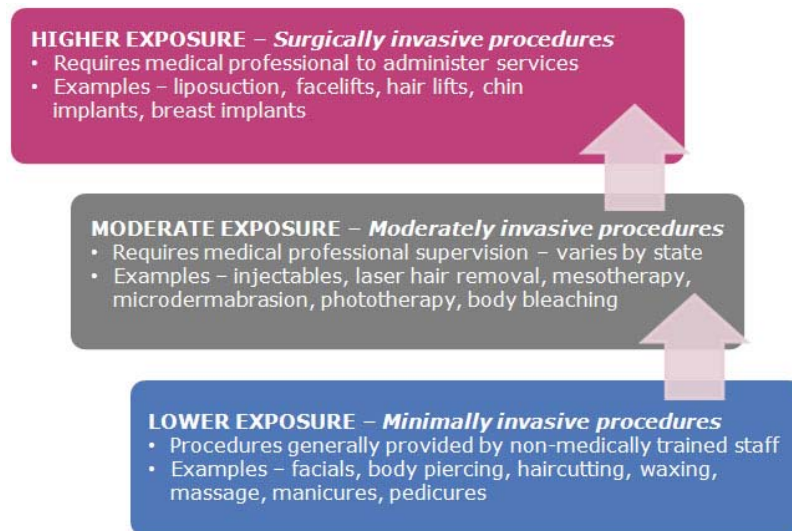
by Evan Smith

Spas and medi-spas are one of the fastest-growing segments in the healthcare professional liability business, with new relaxation techniques, beautifying procedures, and fountain-of-youth potions coming to market on a seemingly daily basis. The dynamic and diverse services of this sector make it an underwriting challenge -- but with up-to-the-minute market knowledge and a proactive, partnership approach to risk management, these risks can be underwritten consistently and profitably over the long term.

Segmenting the Exposures

The class can be broadly split into three levels of risk. Exhibit 1 depicts the various levels of exposure based on the procedures being performed. The "lower risk" end of the spa/medi-spa market is comprised of facilities that perform minimally invasive procedures. These include facials, body piercing, haircutting, waxing, massage, manicures, and pedicures. While these constitute the lower hazard areas of the business, there can be a high frequency of claims -- from fungal infections caused by unsanitary pedicures and rough bruising from massages, to slips and falls in spa showers. Claims can be severe too: a customer's allegations of sexual abuse by a massage therapist, a pierced jugular by an inexperienced hairdresser, a man hit by a car leaving the spa in an ultra-relaxed state, a serious head injury from a shower fall.

Exhibit 1



The next level of exposure is comprised of facilities that conduct procedures which typically require some involvement by a medical professional. Just how much involvement is regulatory driven and varies state-by-state. In some jurisdictions, a medical professional may simply need to be accessible. Other places require a physician on medi-spa premises when procedures are performed. This class includes facilities that do cosmetic procedures using injectables (e.g., mesotherapy, Botox®, Restylane®, or Juvederm®), and provide services such as laser hair removal, and bleaching.

As the services become more invasive and sophisticated, claims severity can escalate. Patients may be exposed to hepatitis from injectables delivered with previously used needles, burned by lasers during hair removal, or left with facial malformations from off-brand Botox®. The claims can be very emotional; consider a young woman left with lifetime scarring. Plaintiff's attorneys eagerly cast medi-spas as profit-mongering at vulnerable people's expense. These cases may allege deceptive trade practices and seek treble damages and awards of attorney fees.

There is one higher level of risk: Facilities that perform procedures such as liposuction, facelifts, hair lifts, chin implants, and breast implants. However, while these procedures may be done in a medi-spa, they are surgeries and hence are considered in the underwriting class of surgery centers, not medi-spas.

At both the lower and moderate levels of the spa/medi-spa risk spectrum, there may be underwriting considerations beyond the standard professional and general liability coverages. Facilities may contract to have spa- or third party-branded products (e.g., sun lotions, cleansers, neutraceuticals) available onsite, raising the specter of product liability. The close physical contact inherent in many spa services and the prevalence of showers and locker room facilities make these businesses vulnerable to sexual abuse claims. Another consideration, requiring more extensive underwriting, is coverage for physicians if their presence is required on site.

While many spas and medi-spas are marketed "as part of" hotels, resorts, cruise ships, health clubs and the like, these luxury-oriented businesses typically do not provide the services themselves, but outsource the operation to a third party, which leases their space and operates independently on their premises. Consequently, "premises legal" or "fire legal" liability exposure -- arising from things like flood, chemical, fire or water damage a spa causes at the property -- is often a consideration. The outsourcing relationship also raises "additional insured" issues.

How Insurance Can Help

Insurance for these risks must be as dynamic and diverse as the risks themselves. A leading provider of healthcare professional liability insurance, Beazley knows that there are many moving parts to spa and medi-spa risks.

Central to our approach to underwriting this class is asking the right questions to assess the full range of a facility's services and discern the particular coverages needed -- whether it's commercial general liability, professional liability, products liability, fire legal liability, sexual abuse liability and/or umbrella insurance -- for an insured's foreign and domestic exposures. It's also important to ensure that all of the professionals involved with a facility are considered. Some medi-spas, for example, have medical directors who are independent contractors or employed physicians; neither should be overlooked.

Beazley also works closely with policyholders and brokers to support risk management best practices, such as:

- ✓ Securing appropriate informed consent from all patients
- ✓ Conducting patient education and screening (e.g., a pre-procedure checklist to help identify patients who may be ill-suited or at risk for a particular service)
- ✓ Documenting employee training and employment files
- ✓ Ensuring adequate medical/physical supervision in compliance with applicable laws and regulations
- ✓ Maintaining proper credentialing of all physicians, medical personnel, and other service providers.

Sound risk management practices like these are pivotal to an insured's and insurer's ability to effectively defend a spa or medi-spa in a claim. They will also make it more feasible for these businesses to secure the coverage they need for their full spectrum of services now and in the future ... coverage Beazley stands ready to provide in collaboration with our brokers.

To learn more about Beazley's solutions for Miscellaneous Healthcare Professional Liability Risks, contact Evan Smith at evan.smith@beazley.com.

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