

SANDY'S SIDELIGHT

Spring 2009

MedSpa Insurance Newsletter

Stay Enlightened ♦ Stay Heathy ♦ Stay Beautiful



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"A recession is an excellent time to launch a small business. Larger companies rein in their advertising & expansion plans...making it easier for new companies to get noticed & capture market share...& that allows them to underbid their competition. That's very important during a recession, when customers are particularly price-sensitive."

*Why Tough Times
Are Good Times
To Start a Business*
Bottomline On The News
October 15, 2008



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WHAT YOU NEED TO KNOW!

THE GOOD NEWS

"According to the International Spa Association, the number of spas in the U.S. has grown annually by 20% over the past 7 years...one in 4 Americans has been to a spa..."¹

"The biggest increase...has been in the minimally invasive procedures, such as Botox and fillers like Restylane – an 81% increase from 2000 to 2007."²

"It appears now consumers are choosing the less invasive cosmetic procedures, both to give them a boost or to buy time if they need to postpone a more costly invasive procedure because of the economic downturn."³

"Topping out at about 4.6 million procedures, Botox was the number one minimally invasive cosmetic procedure in 2007, according to the American Society of Plastic Surgeons."⁴

"...Spas...have been making a huge effort during the past few years to move away from the idea of 'luxury' & toward that of 'wellness', a shift [which] will serve spas in bad economic times."⁵

THE NOT SO GOOD NEWS

"She was badly burned last year after a...medspa nurse used a laser to remove red veins around her nose."⁶

"The slowing economy has driven two cosmetic medicine companies out of business, while a third has been gobbled up by a corporate giant."⁷

"Many Botox and filler patients are waiting longer than the usual 3 to 4 months between treatments..."⁸

"Irvine-based Allergan announced...sales of Botox slipped 3.1% in the fourth quarter..."⁹

"There are arteries in the face, & if you inject Restylane into one of them, you can cause necrosis, death of tissue...there have been reports of people who have literally had their lips fall off."¹⁰

¹<http://www.sfgate.com>, Posted December 28, 2008

²*Made In The Shade*, Image Magazine, Issue 8, 2008

³<http://inyourface.com>, Posted October 29, 2008

⁴<http://healthmsn.com>, Botox Without Borders

⁵<http://www.sfgate.com>, Spas Shift Focus To Stay Afloat

⁶<http://cbs2chicago.com>, MedSpa Patients Say Lasers Scarred, Burned Them, Posted December 15, 2008

⁷<http://inyourface.com>, Posted December 14, 2008

⁸<http://cbs2chicago.com>, Posted October 3, 2008

⁹<http://inyourface.com>, Posted February 5, 2009

¹⁰Medi-Spas by Jenny Bailly - *Marie Claire Magazine*, November 2007



NEW CALIFORNIA ASSEMBLY BILL (WHICH COULD AFFECT SCOPE OF PRACTICE OF NURSES)

A new Assembly Bill No. 1116 was introduced by Member Carter to the CA Legislature in February, 2009. In a nutshell, this bill “would prohibit the performance of an elective ‘cosmetic surgery’ procedure on a patient unless, prior to the surgery, the patient has received a physician examination by, and has received written clearance for the procedure from, the licensed physician and surgeon or dentist performing the cosmetic surgery or another licensed physician and surgeon or a certified nurse practitioner or a licensed physician assistant...”

‘Cosmetic surgery’ means an elective surgery that is performed to alter or reshape normal structure of the body in order to improve the patient’s appearance, including but not limited to liposuction, and elective facial cosmetic surgery’.¹

I strongly urge you to log onto www.leginfo.ca.gov to follow this important pending Assembly Bill which could have a major impact on the future of medspas

COVERAGES IN THE SPOTLIGHT

EPLI INSURANCE (EMPLOYMENT PRACTICES LIABILITY COVERAGE) & WAGE AND HOUR OR FAIR LABOR STANDARDS ACT



An important yet often overlooked coverage, excluded under most General Liability & Professional Liability policies, is EPLI. Simply stated, this is coverage for:

Employment Related Claims such as Wrongful Termination, Discrimination, Sexual Harassment, Hostile Work Environment, Failure To Hire or Promote, Wrongful Demotion, Negligent Evaluation, Deprivation of Career Opportunity, Retaliation, Wrongful Discipline, etc.

Some policy forms also provide a sublimit equal to 25% of the policy limits for defense of wage and hour claims (claims against an employer for unpaid overtime wages).

In a weak economy, these types of claims tend to become more frequent, namely due to staff layoffs & employee terminations & also due to the fact that desperate times can be a breeding ground for desperate measures. “Litigating wage and hour claims is extremely expensive. Often times, the prevailing plaintiffs (both current & former employees) can recover double the actual damages plus attorneys’ fees.”²

EPLI policies are generally rated based upon number of employees & territorial location; independent contractors & third party coverage can be included. An example of a third party claim could involve:

- A patient/client claiming discrimination because your spa refuses to perform laser or IPL procedures due to her dark skin type

A simple 2 page application is all that is required & there is no cost for quoting.



ATTENTION AESTHETIC TRAINING SCHOOLS OR SPAS WHICH OFFER INHOUSE TRAINING!

Not only could a claim occur during a training session, but have you thought about the potential claim which could occur at a later date, after the student has graduated &/or received the Training Certificate, is involved in a Malpractice claim & alleges inadequate or inappropriate training? Are you properly covered for such a claim? If your facility has this type of exposure, then your Malpractice policy should include direct patient care for the training staff, as well as coverage for the as yet unlicensed students, if they are required to perform procedures as part of their training curriculum.

¹www.leginfo.ca.gov

²Katherine S. Catlos, Esq., *What Are You Doing To Protect Your Company Against Wage and Hour Lawsuits?*

STAYING ILLUMINATED



Remember that your malpractice policy is written on a claims-made basis, meaning it covers the policyholder for alleged acts of malpractice that take place & are reported to the carrier during the policy period or an extended reporting period (“erp”). Policy wording varies, but the meaning remains the same – ‘the insured must notify the company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a claim’.

Prompt reporting of incidents is of the utmost importance, in order to protect your rights under the policy. Don’t risk putting yourself in a position of claim denial due to late claim reporting.



IN THE STAGE LIGHTS

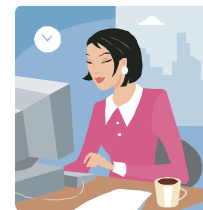
I am honored to have been asked to speak on the Medi-Spa panel at the Crittenden Medical Insurance Conference to be held on Monday, May 4, 2009 at the Grand Hyatt in Tampa Bay, FL, Session #201 “Coverage Botox for Liability Wrinkles; Legal and Insurance Issues from Medi-Spas”. With my co-panelists, attorney Charles D. Bovol & Kevin M. Quinley, “The Claims nCoach”, we will be discussing various important topics, including:

- Overview of the necessary & suggested coverages for medi-spas
- Claims Made Policy Forms
- Tail Coverage
- Defense Outside the Limits vs. Defense Inside the Limits
- Risk Management/Minimizing your exposures to liability
- Claims examples
- Insurance coverage myths & misconceptions
- Legal entity structuring

For more information about this 3 day conference (May 3-5, 2009), log onto: www.crittendenmedical.com.

“He is truly wise who gains wisdom from another’s mishap”.¹

PROFESSIONAL LIABILITY FOR MEDSPA & WELLNESS CENTER CONSULTANTS



This coverage “protects a consultant from allegations that the job was not done right or that the job was not done well enough”². Professional exposures come in the form of allegations of poor performance, breach of contract, conflict of interest, failure to secure confidential & proprietary information or failure to provide proper consulting services. “Professional Liability insurance not only indemnifies injured parties for their loss, but more importantly...provides the necessary funds to investigate, hire an attorney, pay expert witnesses and a host of other legal expenses that will be incurred if you are sued...in many cases these fees can be equal to the actual damages caused”³.

Please contact me to discuss these important coverages in more detail & **Rest Insured!**

¹Publilius Syrus (Roman author, 1st Century B.C.)

²Insurance Tips and Traps for Consultants, www.managementconsultingnews.com

³<http://www.jltservices.com>



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LIGHTSIDE

“Obama Lifts
Botox Sales
in DC and Beyond”¹

“I suspect that more vials of Botox and injectable fillers will be used in people attending this event [President Obama’s Inauguration] than the number of portable toilets that have been brought in for the event (estimates of 5,000).”²

¹<http://www.realself.com>, Posted January 19, 2009

²<http://exploreplasticsurgery.com>, Posted January 19, 2009

If you have questions or information which you’d like to share with fellow medspa professionals, please email me at: sandye@professional-ins.com.

Until my next newsletter remember to...

Stay Enlightened ♦ Stay Healthy ♦ Stay Beautiful!

Sandy Elliott, CISR

Sandy’s SideLight

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