

# Four Hours Ethics

By

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## Chapter 1: A Different Sort of Ethics Book

We know instinctually what is ethical. We only need to listen to our gut. But sometimes humans sacrifice ethics and side with convenience, a perceived necessity or simply pleasure.

For example, a Wells Fargo senior vice president allegedly used a beach house the bank had foreclosed on for lavish personal parties. You have to have brains to make it that far up the corporate ladder. But she treated the rules lightly and got fired, allowing someone else to step into her high paying job.<sup>1</sup>

When you were eight or twelve, you probably thought, "When I get big, *I'm* going to do whatever I want." Bit of a surprise when you got older, wasn't it? There were even more rules. The consequences for breaking them were way tougher than being grounded.

In the massage business, some of these rules are called the Standards of Practice, put out by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB.)

Instead of explaining the rules (which we all already know), this book looks at how the rules crumble for one therapist.

For this book, we'd like to pretend we're in a living room, with plenty of pizza around. Our character's name is Ardis. She is a therapist who is not the least concerned with ethics. In fact she is anti-ethics. We'll see how many mistakes you catch.

We'll cover 5 of the 6 Standards. We will not discuss Standard V:

Roles and Boundaries. If you need 2 hours of Standard V to comply with the NCBTMB requirement, I've also written *Psychological Dynamics* (2008). It covers the 2 hour Standard.

OK? Put your feet up ...

## **Chapter 2: Ardis' First Day**

### **Standard I: Professionalism**

"Ardis, this is the boss. I'm feeling awful today. Can you open up the office for me? Come by the house and I'll leave the keys in the mailbox."

Ardis gets to the office and notices her boss hadn't finished painting the lobby from the day before. There are paint cans, drop cloths and a ladder in the lobby. She maneuvers through the mess to turn on the "OPEN" sign.

Her first potential client walks in, a woman from Latvia, (a country in the Baltic region of Northern Europe.) "We don't massage Latvians," Ardis tells her flatly. The astonished woman turns around and walks out.

Half an hour later, the lobby door opens again and this time Tanya enters. Ardis shows Tanya to a therapy room where one folded towel is draped across a table covered with a sheet and tells her to get ready. Tanya is not a tiny woman. The towel just barely covers her. An inch either way and she's exposed. Ardis, is oblivious to Tanya's discomfort and Tanya is not sure she should object. But after 20 minutes of agony she asks Ardis for a second towel.

Tanya has a bag of rocks for a back. She says she's thinking her tight back muscles may be greater than Ardis can handle. (In reality Tanya is trying to set the stage so she doesn't get stuck with Ardis again.) "Maybe I should stick with Greg." She says,

"He's stronger and gives a deeper massage. I don't want to wear you out."

"Oh, I've had a treatment from Greg," Ardis replies confidentially. "He doesn't know anything; between you and I, he's sloppy. Did you seriously get a good massage from him? Everyone else complains about him so I'm surprised"

"Well, I thought he was pretty good. Should I see a chiropractor?"

"Crooks! Why spend 50 dollars for an adjustment. You're better off getting a massage."

"Really? I didn't know that."

Just as Tanya leaves, Gail walks in. Ardis thinks "Business is great! The boss is going to be proud." In a hurry, she straightens the used sheet--no time to change it--and leads Gail to the treatment room.

Gail sounds like she's having health problems. She doesn't feel well these days and her digestion isn't right. Her mother had cancer; She's wondering if the stomach discomfort she's feeling could be cancer. She's thinking about seeing a doctor. What does Ardis think? "No need. Did you know sharks don't get cancer? People take shark's fins in capsules and it gets rid of cancer."

"Yeah?"

"Sure thing. I sell supplements on the side and I can get you a great deal on some."

"That's awfully nice of you!"

She finishes Gail's treatment, practically pushes her out the door and flips over the sheet. Ardis takes a minute to call and see how her boss is feeling. She reports on a busy morning.

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Admittedly, Ardis slept through some of her massage education. How many mistakes did you catch?

We'll talk about nine here, all from Standard I: Professionalism.

1. I.e. "*provide an environment that is safe and comfortable for the client*". Walking around paint cans and a ladder to get to the treatment room—ouch. How does your business look? Is it safe and comfortable for the client? Is it a haven the client wants to return to? If safety and comfort is done right, the client probably won't even notice, but rather will see your establishment as peaceful.

I once had a massage from a woman who worked from her home. It looked like a tornado passed through it. (Don't get me wrong, my house is a mess right now, but I don't massage there.)

We had to walk around boxes and clutter to get to the massage table which was squeezed between a beat up sofa piled high with clothes and an ironing board with an iron propped on the edge.

I am perfectly comfortable in someone's messy house. But getting a massage is different. And getting one where an iron might fall on me is way different. The clutter spoiled the mood

and I never went back. I can't even remember if it was a good massage.

How do you see clean? Sometimes dirt and disorder creep up on us and we're not aware of it, but others are. This is especially true if the business has been up for a number of years.

I knew a lady that had been in the same location for 35 years. Papers were piled on every surface and a thick layer of dust covered everything. She kept the massage room clean. But I doubt if too many people made it past the lobby to make that discovery. Too bad, because she gave a really good massage.

Comfortable doesn't mean just structural things. One client had a therapist who chatted aggressively through the entire massage. According to the client, she never relaxed and left more stressed than when she arrived.<sup>2</sup> It can be tempting to visit during a massage; for some it makes the time go faster. However, it is believed, this is the #1 complaint clients have about a massage therapist.<sup>3</sup>

Sometimes the client is the instigator. Sometimes they talk because they think they should or because they feel a little awkward. Here is a tip. Don't ask questions. Gradually slow down your speech and have long pauses. It will create an emptiness they fall into and soon they will be in a quiet trance.

Does the client have your attention? Is the body on the table just another in a long series of bodies—do we ever do the massage on autopilot? Do you leave the room more than once during a session to answer the door or telephone? This practice may not be a good idea if you can avoid it.

A friend recommended I try her hair dresser. All the time he was cutting my hair he was on his cell phone. I could have been a mannequin for all he knew. Plus my hair cut came out uneven and I had to re-cut it when I got home.

Most clients don't like it when the therapist interrupts the massage to answer the phone or door. Those that don't mind, will usually say tell you to go ahead.

Do you speak to others while massaging or know someone who does? I have a friend who does an usual type of therapy. People come from all over to learn his technique. If it is okay with the client, these visitors are allowed to observe. It is always okay with clients. In part because they remain clothed for his therapy and the treatment isn't restful like a massage. But basically it is because his business has a social type of atmosphere and he draws that type of clientele.

On the other hand, the first massage I ever had was at the Hotel Del Coronado in California. I saved my money so I could spend a weekend in this upscale resort and naturally try a massage. However, the receptionist stood in the doorway chatting with my therapist during my most of my session. They were complaining about working conditions. I felt like an intruder.

2. I.c. *"treat each client with respect, dignity and worth"*. I think massage therapists in general are the most charming and among the least prejudiced groups of people. However, even we can slip into profiling clients, as Ardis did with the lady from Latvia. Profiling is unjust. Plus you could be throwing away a good client.

There was a therapist who used to sell cars. When an old scraggly man walked in, all the other salespeople scattered except her. As it turned out, he was coming to town from his mega farm and wanted to buy a number of vehicles for the operation. She made a killing that day.

Ardis may have been legally required to provide service to the woman from Latvia. Federal law says she can't refuse to work on people because of "race, color, religion, or national origin" or disability.<sup>4</sup> Not to mention Ardis' comment was heartless.

Many states have gone farther than the federal government and offer customers more protection. For example, a refusal to provide service often must have a business reason and not be arbitrary. Not serving a Republican in California was held by the court to be illegal.

But a funeral home was held liable for ignoring the family's request to ban punk rockers from a service (including one punk decorated in live rats). Protecting the grieving family's comfort would have been a specific business interest allowing refusal to the punk rockers.<sup>5</sup>

Personal prejudices' or disagreements are not enough to decline to serve someone. A New Mexico photography firm told a same-sex couple, apparently over the phone, they didn't photograph commitment ceremonies. That decision cost the firm \$6,600 when that state's Human Rights Commission found they violated the couple's rights.<sup>6</sup>

Wait a minute! Isn't this America? Don't I have a right to choose whom I serve? Generally the courts have decided equal access trumps your individual right.<sup>7</sup>

3. I.j. *“use appropriate draping to protect the client's physical and emotional privacy”*. In jurisdictions which do not require draping, this Standard suggests it might be a worthwhile practice anyway for psychological and professional reasons. As with Tanya, some clients cannot relax if they feel they aren't properly covered. Professionals, such as doctors, drape.
4. I.h. *“obtain voluntary and informed consent from the client prior to initiating the session”*. Ardis just dives in, without any discussion. If her boss calls her on it, she might say, “Hey, the client is lying on the table. She's not here to play jacks. Her consent is implied.” All true but the Standard calls for something a little more overt. A simple description of technique and asking “Is that okay?” would have been better.

Some facilities use the questionnaire/entrance form to obtain consent. If this is done, it may be appropriate to ask if the client has any questions, just to bolster the “informed” requirement.

5. I.o. *“not falsely impugn the reputation of any colleague.”* Disparaging Greg's competence and appearance might move some clientele to Ardis but it's going to create friction in the workplace and it is not the way to build a business.

Ardis may also have more than an ethical problem with this one. There could be legal issues. If Greg is damaged (for example, loses clients) because of what Ardis is saying, Greg could sue. Most courts *assume* Greg suffered damages because Ardis assailed his “professional character or standing.” Greg

would be suing because of Ardis' slander. If Ardis had made the accusations on the Internet or written in a letter to someone, Greg could sue for libel.<sup>8</sup>

In order to win in court, Ardis will have to prove her remarks were true, that Greg actually is incompetent.<sup>9</sup>

Henry Ford, the automobile millionaire, was accused by the *Chicago Tribune* of being ignorant. He sued the paper for libel in 1919.<sup>10</sup> Defense counsel proved Ford was hazy on American history. Ford asked why he should clutter his mind with those facts. If he wanted to know something, he could push a button on his desk and get somebody scurrying in to answer.<sup>11</sup> Ford won the case.<sup>12</sup>

Usually suing for libel is thought to be counter-productive—it gives too much publicity to the charges. But Ford came out on top. Millions of ordinary Americans were delighted this important figure was as unknowledgeable as they were about history.<sup>13</sup>

6. I.n. *“respect the traditions and practices of other professionals and foster collegial relationships”*. Sounds like Ardis had a bad experience with a chiropractor once. But she shouldn't let that color the whole field, at least not when speaking to clients.

Curiously, chiropractors as a whole couldn't sue Ardis for slander. The victim has to be more specific.

By the way, can Ardis get a referral fee from a chiropractor if she referred Tanya? Maybe. She would have to avoid the conflict of interest Code of Ethics XV, which states *“Avoid any interest, activity or influence which might be in conflict with the*

*practitioner's obligation to act in the best interests of the client or the profession."* So it would have to be in Tanya's best interest and not solely in Ardis'. The referral must not exploit Tanya according to Standard IV.j, which says "*—not exploit the trust and dependency of others, including clients and employees/co-workers)*"

If Ardis gave Tanya her card and recommended a chiropractor, saying "He's a good chiropractor," that's not a problem. However if Ardis told the chiropractor Tanya's name without her permission, it might violate Standard III.a which says, "*protect the confidentiality of the client's identity in conversations, all advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, is required by law or for purposes of public protection."*

Another scenario that might work is recommending a chiropractor and saying, "Tell her I sent you. She'll take good care of you." In both cases, the decision is the client's with no pressure from Ardis, and Tanya's confidentiality is maintained.

7. I.f. "*use standard precautions to insure professional hygienic practices*". One of several problems in not changing sheets is the possibility of transferring MRSA to the new client. These deadly bacteria in shed skin can contaminate surfaces for weeks or months until proper cleaning occurs.<sup>14</sup> Not to mention it is unprofessional.
8. I.k. "*be knowledgeable of his/her scope of practice and practice only within these limitations*". Treating cancer wasn't in Ardis' massage education so it's outside of her scope of practice.

9. I.I. “refer to other professionals when in the best interest of the client and practitioner.” If Ardis realized she had no business dispensing cancer advice, she might have just kept quiet or agreed that Gail’s idea of checking with a doctor sounded good.

One Standard that Ardis didn’t violate is I.d. “use professional verbal, nonverbal and written communications.” A friend was reading a novel about Virginia’s chief medical examiner. A key plot element was the victim’s clavicle. Since my friend didn’t know the clavicle is part of the pectoral girdle, he missed a major plot element.<sup>15</sup>

We can cause our clients to miss the plot if we use terms they doesn’t understand. So if we want to discuss body part etc. with the client, we might be better off using terms they are familiar with.

Jargon can be hard to turn off. William F. Buckley, Jr., political pundit and author, was famous for his fancy use of English. He often spoke of immanentizing the eschaton, two words so offbeat the spell checker in Microsoft Word doesn’t recognize them. When a young correspondent asked Buckley what the phrase meant, he couldn’t put it into simple English. (It means triggering the apocalypse; bringing about the end of the world.)<sup>16</sup>

### What do I take away from this chapter?

Does the environment of my workplace reflect my values—  
Pleasant, safe, professional?

Am I treating everyone I encounter with respect—prospects,  
clients, colleagues, other professionals?

Am I dominating my relationships with others, particularly clients, or do I seek input and two-way communication?

Does this respect include not just communication but also treating them safely?

## Chapter 3: The Afternoon

### Standard II: Legal

Ardis has Betty, a fellow therapist, over for lunch. As they sit in the back room eating sandwiches, Betty describes trashing her former boyfriend's apartment and putting sugar in his gas tank. "The rat owes me and he's gonna pay!"

When Betty leaves, a woman walks through the door asking to use the restroom. Ardis tells her she's sorry but the restroom is for customer use only.

Her first client of the afternoon, Roger, pays cash for an hour. Ardis thinks about her phone bill. She writes forty-five minutes in the appointment book and pockets the rest. She justifies the theft by telling herself that she's making money for the business therefore she's entitled.

The boss calls, blissfully unaware of the chaos at the office, and asks Ardis to place a new online ad with Craigslist. Ardis finds a competitor's ad she likes, copies it, and posts it with the phone number changed. Later in that afternoon, the boss phones, saying the competitor emailed in a complaint about the copying. Ardis tells her it must have been Craigslist's fault—that's not the ad she posted.

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Some of the legal problems may be harder to catch. How many did you see?

We'll talk about five, all from Standard II, Legal and Ethical Requirements.

1. II.d. *“report to the proper authorities any alleged violations of the law by other certificants”*. Although many therapists might find it distasteful and counterintuitive, the Standard requires one to report crimes by other NCBTMB certified therapists to the proper authorities, in this case the police. Ardis would have to report Betty's vandalism according to the Standard.

However, if a person reports a crime and they are wrong, they could be sued by the accused. (Some states may have statutes protecting the person reporting the alleged crime.)

One state, Ohio, also requires citizens to report serious crimes they know about.<sup>17</sup> Ohio may be one of the few states to do so.<sup>18</sup> (California has a law requiring crimes against children be reported.)<sup>19</sup>

2. II.a. *“obey all applicable local, state, and federal laws”*. Sometimes the problem is *not* knowing the law. A majority of states require businesses to allow anyone to use the restroom.<sup>20</sup> If Ardis was in one of those states, she should have let the woman in.

Before I knew this law I was faced with a predicament. Newport Beach in California suspected there were unlicensed therapists working in some of the establishments. So they passed an ordinance no one but licensed therapists and signed in clients could enter pass the lobby of a massage business. The law made no allowances for emergency services, receptionists, cleaning people or visitors. Twice people came by asking to use my restroom which was located pass the lobby. One was a young

woman who was very ill and the other was an older woman with an urgent need. I did what you would have done.

II.e. *“maintain accurate and truthful records”*. Not a big surprise that entering an inaccurate entry in the daybook violates a Standard.

Skimming in a cash business is not uncommon. When the children of a deceased co-owner of a coin-operated laundromat cleaned out her house, they found 22 bags of rare coins under the bed worth nearly a million dollars. The other owner sued the estate. The court concluded that because the deceased owner had written no checks for common services in the past seven years, she had been skimming from the laundromat. The partner was awarded \$500,000 from the estate.<sup>21</sup> (It’s not clear why the court thought so many valuable coins passed through the business.)

As an owner, aside from the ethical issues, one may want to learn the clues that employees are skimming:<sup>22</sup>

- Flat or declining revenues when the rest of the industry is rising
- Decreasing ratio of cash sales to credit card sales
- Decreasing ratio of cash sales to total sales
- Customer receipts not matching company records

3. II.i. *“respect existing publishing rights and copyright laws”*. Copyright attaches whenever somebody writes something. This protection, modernly, extends for the life of the author plus 70 years.<sup>23</sup> So Ardis should have asked permission to use the ad. Quoting a small part of a work is alright. Copyright doesn’t last forever—anything published before 1923 is out of copyright—

in the “public domain.”<sup>24</sup> Ardis could have used an old ad like that freely, if she ever found one.

4. II.c. “*accept responsibility for his/her own actions*”. Often people play a blame game. This takes an enormous amount of energy to maintain. It is so much easier to admit we’re only human than to stay in one place and continually feel inadequate. One of the side benefits of taking responsibility is people can trust you. They know you’re not invested in having an unblemished façade. It is said that people who cannot admit when they are wrong, are usually not committed to correcting their mistake or to change a faulty habit. Ardis might have just said, “Oops. Yep, it was a mistake to copy that ad; won’t do that again.”

If Ardis watches *Survivor* on television, she might remember Rich Hatch, winner of the first *Survivor* series. He wrote “Make as many mistakes as you can and make them fast.”<sup>25</sup> I don’t know that I would have the courage to go that far but his point was we can learn from our mistakes.

Part of accepting responsibility is doing something to accept responsibility *for*. Don’t be afraid of taking the initiative. Ardis isn’t. She does everything wrong but her confidence is far from crushed.

Speaking of confidence, during World War II Douglas Bader was a combat pilot despite having lost both legs. Shot down and imprisoned by the Germans, he made many escape attempts on two prosthetic legs. His advice: “But never, never let them persuade you that things are too difficult or impossible.”<sup>26</sup>

Responsibility can be proactive too. How often have you heard someone say “That’s not my job.” Southwest Airlines sees things differently. Consistently profitable (unusual in the airline industry), they have a turnaround time of 25 minutes, half that of the competition. That means they unload the aircraft, service the plane, clean the cabin, board the new passengers and are ready to take off again much quicker than other airlines.<sup>27</sup>

Part of how they accomplish that is “everybody does everything.” Flight attendants help clean the cabin. Pilots check passengers in.<sup>28</sup>

Southwest figures if they took just 5 minutes longer to turn each plane around, they would have to buy 18 more jets to maintain their current schedule, at a cost of nearly one billion dollars.<sup>29</sup> Their employees taking responsibility—“everybody does everything”—saves the airline money; helps make the airline profitable.

What kind of employee would you rather hire—“It’s not my job” or the one who pitches in? How about this employee: a little girl had been placed on the airplane by her mom to fly alone to visit her grandparents. The little girl was scared and very upset. The Southwest flight attendant pulled out her personal credit card so the child could call her grandparents and be reassured. The girl’s “world was positively changed”, reported a passenger who witnessed the incident (and was impressed).

Is this what the NCBTMB means by accepting responsibility? Probably not. It’s a step beyond but why not? We are compassionate massage therapists after all.

## What do I take away from this chapter?

The last chapter was all about respect for others. This one is about respect for oneself.

Do I have enough respect for myself not to cut legal corners?

Am I informed enough to know what my responsibilities are?

Am I honest enough to do my own work?

Am I responsible enough to acknowledge my actions, even when I'm wrong?

Am I adult enough to present a reasonably honest face to the world, not worried that my mistakes will tarnish my image?

## Chapter 4: Day 2

### Standard III: Confidentiality

Miraculously still employed, Ardis shows up for her second day of work. She sees someone going through the dumpster behind the office as she walks in.

Her boss is back, a little surprised the paint cans and ladder are still out and puts them away.

Her first client is a 13 year old who says her mom is out there shopping and said it was OK for her to get a massage. Ardis signs the client in.

In accordance with office policy, she asks for her birth day so they could send her a special birthday offer.

Once that client is gone, an inspector enters the lobby and asks Ardis for the client records. Well versed on Standard III, Ardis tells him they are private and jokes about some of her clients. The boss walks in just then and invites the inspector back into the file area.

As the boss leaves for lunch, she asks Ardis to straighten up the filing system. Ardis looks at the client records and how they're running out of space. To create room, she pulls all the files that are more than 2 years old and walks them out to the dumpster.

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How many possible problems did you catch?

I spot 6 from Standard III, Confidentiality.

1. III.b. “*protect the interests of clients who are minors or clients who are unable to give voluntary and informed consent*”. At 13, Ardis’ client was a minor. She should have spoken with her mother directly to get consent for the massage.
2. III.c. “*solicit only information that is relevant to the professional client/therapist relationship*”. Is the birth date for a commercial mailing relevant to the client/therapist relationship? Maybe. Since the purpose was disclosed and the client was OK with the purpose, this may not be an ethical problem.

I’ve seen questionnaires asking for home address, home phone, email, business phone, occupation, employer, years employed, Social Security Number, have you seen a psychotherapist in the past year?, marital status, children, do you drink?, do you smoke? How many times have you had a professional massage? It is possible there are relevant relationship reasons to ask these questions (though marital status and children seem odd—maybe it’s to assess stress level?)

The point is the therapist and business should make sure they are collecting *needed* information.

Incidentally, questionnaires commonly have a waiver at the bottom for the client to sign. It may read something like this “By signing this release, I hereby waive and release my massage therapist from any and all liability past, present and future relating to massage therapy and bodywork.”

Besides being ethically questionable (it seeks to avoid responsibility for one thing), it is possibly legally ineffectual. State law may bar waiving negligence damages<sup>30</sup> (where the

client was hurt because the therapist failed to exercise the degree of care expected of a massage therapist).<sup>31</sup>

A more narrowly drawn paragraph might have a better chance of protecting the business. The courts are less likely to let you avoid direct damages—what it costs to make the client the way the client was before the injury (for example, doctor visits). However, waiving indirect (consequential) damages stands a better chance (the theater ticket the client couldn't use because the injury put him in the hospital).<sup>32</sup>

If you are committed to having such a clause on the questionnaire, check with a lawyer to see what your state's rules are.

Be aware that third party claims because of the injury are not barred since the third party did not sign the waiver.<sup>33</sup> Theoretically, for instance, an injured client's spouse could sue for loss of consortium and future income.

I should mention that in all my years of massaging I have never heard of anyone being injured by a massage. But I suppose a client could fall off the table.

3. III.d. "*share pertinent information about the client with third parties when required by law*". Ardis was right—client information is generally confidential. One of the exceptions is for law enforcement in the course of duty. If the inspector was authorized by the city or state to inspect client records (a common provision), Ardis should have shown them to him.

4. III.a. *“protect the confidentiality of the client’s identity”*. Ardis put complete client records into a dumpster she saw somebody going through earlier.

If you’re an owner, do the employees or independent contractors you use know about confidentiality? Do you have a policy in place on the subject? Is the records area separate from places where clients are allowed? Are records on computer behind a password (in case the computer is stolen)?

5. III.f. *“store and dispose of client files in a secure manner”*. This suggests she should have shredded the client documents before getting rid of them.

6.

If computerized, are the records backed up off site? That way, no matter what happens at the office (theft, fire), the records are available to the business. This service is available online for, at this printing, about \$55 a year from companies such as Carbonite. There are also other ways of backing up a computer such as a zip drive. The advantage of the first option is you don’t have to think about it and it will actually get done.

The Standards do not state whether the original client record is required or not. It may be possible to enter client records on computer, including scanning any forms the client fills out or signs. This greatly reduces the space required for storing files. But it raises the issue of computer security. Good passwords, operating system updates and firewalls are musts.

7. III.e. *“maintain the client files for a minimum period of four years”*. Even if she’d done everything else right, Ardis was tossing 2 years old records when she’s required to keep them

for twice that long. Not to mention the state or other licensing agency may have a similar requirement.

New York, for instance, requires records to be kept for 6 years or until the client is 22, whichever is longer.<sup>34</sup>

Regardless of the reasons for maintaining records and confidentiality, this is an important commitment to the National. In September 2009, they permanently revoked the certification of a therapist partially because of confidentiality violations.<sup>35</sup>

### What do I take away from this chapter?

Despite the intrigue of gossip, do I keep my client's names and personal information private?

Do I collect information from my clients that have no bearing on massage?

Are my client records out of public areas and, preferably, kept locked?

## Chapter 5: Fired

### Standard IV: Business Practices

The boss gets back from lunch and is pleased to see so much new space in the office. Until she realizes half her client records are out in the dumpster, spotted with ketchup and mustard.

She fires Ardis.

Ardis is not dismayed. She figures running a massage business is a piece of cake. If she gets her own place, she can keep all the money—no sharing!

She has a friend, Fialcowitz, who is willing to sublease a room to her. She moves right in. Fialcowitz helps her and they start to repaint. She's eager to get her business open and figures clients will forgive the disorder. She wants her own entrance so, with the building owner's okay, they replace a large window with a door and add a roughly made wooden stoop to the outside.

She thinks her previous job's ads were a little weak. Her shark fin sales have been a little quiet too. She figures if she links the two—"My massage and shark supplements cure cancer!"—she'll rake in the bucks. But it needs a little authority. So she goes online and for \$20 becomes a doctor. It's a doctor of divinity but she sees no reason to bother clients with details.

So on the evening of Day 2, Doctor Ardis Take is in business. Her "Dr. Ardis Take guarantees a cure" internet ad has brought in Tom. Tom is little concerned when the wooden stoop sags under his step but enters anyway, walking over drop cloths and brushing again wet paint.

Ardis is immediately attracted to Tom and is determined to have him as her next boyfriend. She chats him up during the massage and learns Tom is really supposed to be running an errand for his boss. She makes several suggestions of a date for later, even after Tom says he's already got a girlfriend. She feels shunned by the rejection and makes a veiled threat "Could you get into trouble getting a massage on company time? I mean I would hate for you to lose your job or anything." Tom remembers the work phone number he put on the intake form. "No, it's cool," he says, trying to sound convincing.

After the massage, Tom is presented with the bill. He's a bit surprised at the charges. They are higher than he anticipated even though he declined the shark fin. But he pays and runs, thinking maybe he got off easy...considering.

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Lots of potential here but let's limit ourselves to Standard IV, Business Practices.

I see 7 potential areas of concern.

How many did you find?

1. IV.a. *"provide a physical setting that is safe and meets all applicable legal requirements for health and safety"*. Ardis should wait to open when renovations are complete, including structural issues such as a finished doorway. It's likely the new door and stoop required a city permit and inspection.<sup>36</sup>

The new door may trigger the need to meet Americans with Disabilities Act requirements.<sup>37</sup> This could include a ramp and

expanding the restroom to make it wheelchair accessible.<sup>38</sup> Fialcowitz may rue the day he sublet if he cannot afford the remodel.

2. IV.b. *“maintain adequate and customary liability insurance”*. It appears Ardis just skipped this step. The landlord might have caught it but he’s probably unaware Fialcowitz is actually subleasing part of his space and Ardis is not covered under Fialcowitz’s policy.
3. IV.d. *“accurately and truthfully inform the public of services provided”*. Massage therapy done well should stand on its own, without needing claims of miracle cures.
4. IV.e. *“honestly represent all professional qualifications and affiliations”*. Ardis became a doctor in about 5 minutes. They may help the advertising but is it real? Not to mention Ardis could be accused of practicing medicine without a license. If a client claims to be injured by someone who falsely presented themselves as a doctor, the imposter could be sued and possibly go to jail.

If everyone knows it’s a gag, fine. There was a restaurateur in Los Angeles who claimed to be the heir to the Russian throne. Nobody believed him and he served great food, so it was all in fun.

A massage establishment located next to a chiropractic establishment or medical office might need to be particularly sensitive to clients drawing unwarranted connections.

Being honest about the business helps avoid unmet expectations later.

5. IV.h. *“advertise in a manner that is not misleading to the public”*. The honesty in services offered and qualifications extend to advertising. Clearly Dr. Ardis Take’s cancer cure is a little over the top.

Advertising is often the first look the (prospective) client has of the business. Is the ad clear and easy to read? Are hours and location readily seen? Is there a web site? (Massage Envy has a web site covering 42 sites—maybe you need one.) Does someone promptly answer the phone or email? If not, does the client hear a commitment to return the call within a certain deadline?

What concerns some people about trying new things or a new business is they don’t know what to expect. They don’t know if it’s worth the cost or bother. If they have never had a massage before they might wonder if they will even like it. Possibly your ad’s primary goal is to convince the reader the experience will be trouble-free: easy to accomplish, light on the pocketbook. Sometime these are the initial hurdles which have to be dealt with in order to attract some clients.

6. IV.j. *“not exploit the trust and dependency of others, including clients.”* Hinting that confidentiality might be broken and his boss learn about the massage, exploits Tom’s trust.
7. IV.k. *“display/discuss a schedule of fees in advance of the session that is clearly understood by the client or potential client.”* One of those little tasks Ardis neglected in the rush to open. It just makes sense to let the client know what it costs.
- 8.

One of the quickest ways to get the rate you pay for processing credit cards hiked (or lose the merchant account all together) is to accumulate a lot of charge backs. The credit card customer calls the card provider and disputes the charge. Maybe you'll win. If you win several times, the credit card processor is still going to wonder what's going on. Your contract with them probably says they can raise that rate at their discretion. So you thought you were paying 2.25% per transaction and now suddenly it's 4.24% or more.

(Your contract with them, if you ever read it, would probably keep you up nights. The longest one I've seen is 62 pages. It contained a provision that I would fly the provider across the country from the East Coast whenever he wanted and put him and his team up at a hotel. Since I work 20 minutes from Disneyland, I saw some possibilities for abuse.)

Posting your fees won't solve all those problems. It will eliminate the element of surprise...for both of you. You never know how a client might react.

### What do I take away from this chapter?

How do I define honesty?

Am I honest enough to provide for my client's protection, by providing confidentiality, a safe environment and possessing adequate liability insurance?

Am I describing my skills accurately without embellishment?

Am I advertising only what is within my ability and not exaggerating?

Do I openly show my fees and do I make them clear to the client?

## Chapter 6

### Standard VI: Business is Business

New day. Ardis is full of energy and eager to go. She anticipates big things so she hires her current boyfriend Jim as a therapist. They plan to celebrate the new business with a big dinner out tonight. He'll sleep over and they'll go to a hot stone seminar in the morning—might be a good thing to add to the services her business offers. Ardis is looking forward to a great business day.

Her first client, Freddy, is an avid reader of fiction. Contrary to Ardis' repeatedly saying "No," Freddy continues to suggest something personal. Finally, the massage is over. Ardis is exhausted from the stress and feels depressed.

Her next client, Steve, invites her out. She remembers Tom rejecting her and accepts, thinking "That will show him!"

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Any problems or potential ones that you can see?

There are four I'd like to talk about.

1. VI.c. *"recognize that sexual activity with clients, students, employees, supervisors, or trainees is prohibited even if consensual"* Ardis has a pre-existing relationship with Jim. If Jim was a client, that would allow the intimacy to continue under VI.a. *"unless a pre-existing relationship exists between a certificant or applicant for certification and client prior to*

*the certificant or applicant for certification applying to be certified by NCBTMB.”*

However, Jim is now an employee and the clause about employees (section c) does *not* contain an exemption for pre-existing relationships as does the client clause (section a). Is this an oversight or did NCBTMB intend to treat employees differently? In any case, intimacy between employer/employee is ripe for sexual harassment problems.

One advantage to Jim’s being an employee is they can resume an intimate relationship immediately if he quits working for Ardis, as opposed to having to wait 6 months if he were a client with no pre-existing relationship (VI.a.).

2. VI.b. *“in the event that the client initiates sexual behavior, clarify the purpose of the therapeutic session, and, if such conduct does not cease, terminate or refuse the session.”*

According to this Standard, Ardis probably should have ended Freddy’s session once she ‘clarified the purpose’ and the behavior still continued.

We all have our techniques for dealing with dopey clients. But the Standard requires that if the behavior does not stop, the massage should be broken off. Taking a stand would have empowered Ardis as well. Ardis is spunky as we know, but has not yet learned that the therapist is the person in control...not the client.

It might be well to indicate on the fee schedule whether fees are refundable once the massage has begun. At least make a policy in advance whether or not you will refund the fee if the massage is terminated.

Everyone handles a situation like that differently. (Although there is less need for it now that massage has gained in popularity and the public are better informed.)

3. VI.a. *“refrain from participating in a sexual relationship or sexual conduct with the client, whether consensual or otherwise, from the beginning of the client/therapist relationship and for a minimum of six months after the termination of the client/therapist relationship unless a pre-existing relationship exists between a certificant or applicant for certification and client prior to the certificant or applicant for certification applying to be certified by NCBTMB.”*

Under this Standard, Steve will have to go somewhere else for his massages and wait six months before he and Ardis can have anything other than a platonic relationship.

### What do I take away from this chapter?

Do I keep areas of my life separate?

Am I self-confident enough and not to worry about the loss of a fee for stepping away from a misbehaving client? Am I in control of the massage experience?

## Chapter 7

### Ethical Decisions

No one will fault a therapist whose ethics are those found in the Code. That's all you're required to do.

However, ethics can be more involved. Ethics provide the opportunity to ask questions about how you deal with the world. I could spend this extra \$60 on a tune up or lottery tickets. Either is morally OK. But if I have a set of personal ethics about how I choose, one purchase may be clearly indicated above the other.

How do you know if your ethics—your decision making—are working? Do you feel good about yourself and your life? Do you feel like you're becoming the person you want to be? You might consider if your decisions are making you comfortable and if they will improve your life in the long run.

I like ethical people. I know they won't steal from me, cheat me, betray me or shoot me. I want ethical people in my life. I want them for neighbors. I want to be surrounded by them. And if I'm doing something unethical, I want them to tell me. I don't want to pay for it or feel guilty about it later.

## Appendix: Ethics and More Ethics

The National probably has the best known set of massage ethics. Some states, such as Utah,<sup>39</sup> have adopted the National's as the basis for their own ethics. However, there are other codes of ethics in the industry.

Codes are not limited to the United States. Codes of ethics for the massage industry are on the web for Australia,<sup>40</sup> Ireland,<sup>41</sup> New Zealand<sup>42</sup> and the United Kingdom.<sup>43</sup>

Here are some of the other American codes.

### *The American Massage Therapy Association*

#### *Code of Ethics*<sup>44</sup>

Massage therapists shall:

1. Demonstrate commitment to provide the highest quality massage therapy/bodywork to those who seek their professional service.
2. Acknowledge the inherent worth and individuality of each person by not discriminating or behaving in any prejudicial manner with clients and/or colleagues.
3. Demonstrate professional excellence through regular self-assessment of strengths, limitations, and effectiveness by continued education and training.
4. Acknowledge the confidential nature of the professional relationship with clients and respect each client's right to privacy.

5. Conduct all business and professional activities within their scope of practice, the law of the land, and project a professional image.
6. Refrain from engaging in any sexual conduct or sexual activities involving their clients.
7. Accept responsibility to do no harm to the physical, mental and emotional well-being of self, clients, and associates.

*Associated Bodywork and Massage Professionals*

*Code of Ethics<sup>45</sup>*

As a member of Associated Bodywork & Massage Professionals, I hereby pledge to abide by the ABMP Code of Ethics as outlined below.

**Client Relationships**

- I shall endeavor to serve the best interests of my clients at all times and to provide the highest quality service possible.
- I shall maintain clear and honest communications with my clients and shall keep client communications confidential.
- I shall acknowledge the limitations of my skills and, when necessary, refer clients to the appropriate qualified health care professional.
- I shall in no way instigate or tolerate any kind of sexual advance while acting in the capacity of a massage, bodywork, somatic therapy or esthetic practitioner.

**Professionalism**

- I shall maintain the highest standards of professional conduct, providing services in an ethical and professional

- manner in relation to my clientele, business associates, health care professionals, and the general public.
- I shall respect the rights of all ethical practitioners and will cooperate with all health care professionals in a friendly and professional manner.
  - I shall refrain from the use of any mind-altering drugs, alcohol, or intoxicants prior to or during professional sessions.
  - I shall always dress in a professional manner, proper dress being defined as attire suitable and consistent with accepted business and professional practice.
  - I shall not be affiliated with or employed by any business that utilizes any form of sexual suggestiveness or explicit sexuality in its advertising or promotion of services, or in the actual practice of its services.

### **Scope of Practice / Appropriate Techniques**

- I shall provide services within the scope of the ABMP definition of massage, bodywork, somatic therapies and skin care, and the limits of my training. I will not employ those massage, bodywork or skin care techniques for which I have not had adequate training and shall represent my education, training, qualifications and abilities honestly.
- I shall be conscious of the intent of the services that I am providing and shall be aware of and practice good judgment regarding the application of massage, bodywork or somatic techniques utilized.
- I shall not perform manipulations or adjustments of the human skeletal structure, diagnose, prescribe or provide any other service, procedure or therapy which requires a license to practice chiropractic, osteopathy, physical therapy, podiatry, orthopedics, psychotherapy, acupuncture,

- dermatology, cosmetology, or any other profession or branch of medicine unless specifically licensed to do so.
- I shall be thoroughly educated and understand the physiological effects of the specific massage, bodywork, somatic or skin care techniques utilized in order to determine whether such application is contraindicated and/or to determine the most beneficial techniques to apply to a given individual. I shall not apply massage, bodywork, somatic or skin care techniques in those cases where they may be contraindicated without a written referral from the client's primary care provider.

### **Image / Advertising Claims**

- I shall strive to project a professional image for myself, my business or place of employment, and the profession in general.
- I shall actively participate in educating the public regarding the actual benefits of massage, bodywork, somatic therapies and skin care.
- I shall practice honesty in advertising, promote my services ethically and in good taste, and practice and/or advertise only those techniques for which I have received adequate training and/or certification. I shall not make false claims regarding the potential benefits of the techniques rendered.

*International Massage Association*

*Code of Ethics*<sup>46</sup>

1. It is with determination and dedication that the Association and its members achieve the goal of maintaining a standard of excellence in all that we do.
2. Our clients' well being shall always come first.
3. We shall be dedicated to providing competent service with respect, compassion and honesty for everyone seeking our holistic health treatments and services.
4. We shall deal with others as we ourselves wish to be dealt with.
5. We shall acknowledge our limitations and shall not attempt to diagnose bodily maladies but shall endeavor to work with all health care professionals to provide appropriate care in the best interest of the individual client.
6. We shall recognize the responsibility to comply with the requirements of all governing laws. Willful disobedience to the law shall result in immediate revocation of membership status and all accompanying privileges.
7. Any member failing to abide by the Code of Ethics shall be answerable to the Board of Directors for "Peer Review."

*The Florida State Massage Therapy Association*

*Code of Ethics and Code of Conduct*<sup>47</sup>

- Honestly represent their education and certification and maintain their professionalism through continuing education
- Formulate treatment plans that are beneficial to the client/patient's health and well-being

- Describe their massage therapy treatment and their intended draping procedures to each client/patient
- Respect the client/patient's right to continue, modify or discontinue massage therapy at any time and respect the client/patient's choice
- Recognize the scope of massage therapy and refer to other healthcare professionals when appropriate for the client/patient's health and well-being
- Provide quality care to those who seek professional massage therapy and maintain high standards of professional competence
- Maintain honest and accurate records
- Maintain a clean, professional environment and high standards of personal hygiene
- Never engage in any sexual conduct involving clients/patients
- Advertise accurately and with professional integrity
- Administer all treatments in a professional manner with respect for the client/patient confidentiality, boundaries, safety, and privacy.

### **Code of Conduct**

- Adhere to the FSMTA Constitution, By-laws, Policies & Procedures, Patient's Bill of Rights, and Code of Ethics
- Conduct themselves always in a professional and ethical manner

- Treat the client with respect and dignity
- Be professional and ethical in all verbal, nonverbal, and written communications
- Adhere to all Florida laws, rules and statues governing Massage Therapy
- Seek other professional advice when needed
- Remain in good standing with the FSMTA and the Florida Board of Massage Therapy
- When using the FSMTA logo on business cards, brochures, advertisements, stationary, websites, and other forms of communications with the public, do so only within FSMTA established guidelines and in a professional and ethical manner
- Immediately return the FSMTA certificate if it is revoked or suspended
- Obey all applicable local, state, and federal laws
- Refrain from any behavior that results in illegal, discriminatory, or unethical actions
- Accept responsibility for their own actions
- Report to the proper authorities any alleged violations of the law by other practitioners
- Maintain accurate and truthful records
- Report to the FSMTA any criminal convictions regarding him/herself

- Protect the client's identity in all situations unless requested by the client in writing, medically necessary or required by law.
- Solicit information only that is relevant to the professional client/therapist relationship
- Store and dispose of client files in a secure manner
- Practice with honesty, integrity and lawfulness
- Provide an environment that is safe and meets Florida legal requirements for health and safety
- Accurately and truthfully inform the public of services provided
- Represent all professional qualifications accurately and truthfully
- Advertise in a professional and ethical manner and in a way that follows all laws and rules set out by the FSMTA and the Florida Board of Massage Therapy
- Recognize the patient's rights and limitations and only practice within those
- Do not exploit the relationship with the client for personal gain
- Do not engage in any sexual activity with the client
- Avoid dual relationships with the client that could impair judgment or harm the client, employees or co-workers.

- Respect the client’s freedom of choice in regards to the massage and the right to refuse treatment
- Do not practice under the influence of alcohol, drugs or any illegal substances (with the exception of prescribed dosage of prescription medication which does not significantly impair the therapist)
- Have the right to refuse therapy to a client who is abusive or under the influence of alcohol, drugs or any illegal substance
- Act in a professional and ethical manner at all FSMTA functions
- Do not deliberately misrepresent themselves, the facts, or the FSMTA in any way
- Respect the boundaries of all other therapists, clients, FSMTA members

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The National influenced these Codes: Alabama <http://www.alabamaadministrativecode.state.al.us/docs/mass/7mass.htm>, Kentucky

<http://www.lrc.state.ky.us/kar/201/042/060.htm>, Massachusetts

[http://www.mass.gov/?pageID=ocaterminal&L=6&L0=Home&L1=Licensee&L2=Division+of+Profession+al+Licensure+Boards&L3=Board+of+Registration+of+Massage+Therapy&L4=Statutes+and+Regulations&L5=Rules+and+Regulations+Governing+Massage+Therapists&sid=Eoca&b=terminalcontent&f=dpl\\_boards\\_mt\\_cmr\\_269cmr500&csid=Eoca](http://www.mass.gov/?pageID=ocaterminal&L=6&L0=Home&L1=Licensee&L2=Division+of+Profession+al+Licensure+Boards&L3=Board+of+Registration+of+Massage+Therapy&L4=Statutes+and+Regulations&L5=Rules+and+Regulations+Governing+Massage+Therapists&sid=Eoca&b=terminalcontent&f=dpl_boards_mt_cmr_269cmr500&csid=Eoca)

<sup>40</sup> Australia Association of Massage Therapists, *Code of Ethics*, undated,

<http://www.aamt.com.au/page.php?pgname=CodeEthics>. Also ARM's Code at

<http://remedialmasseurs.com.au/office>, AMT's Code [http://www.amt-](http://www.amt-ltd.org.au/index.php?Page=Find%20a%20Therapist_Code%20of%20Ethics_1.php)

[http://www.amt-ltd.org.au/index.php?Page=Find%20a%20Therapist\\_Code%20of%20Ethics\\_1.php](http://www.amt-ltd.org.au/index.php?Page=Find%20a%20Therapist_Code%20of%20Ethics_1.php)

<sup>41</sup> Catherine Roe, *Massage Ethics*, 2009, <http://www.dublin-massage-therapy.com/massage-ethics.html>

<sup>42</sup> Massage New Zealand, *Code of Ethics*, 2009, <http://massagenewzealand.org.nz/about-us/code-of-ethics/>

<sup>43</sup> General Council for Massage Therapies, *Code of Ethics, Conduct and Practice*, 2007,

<http://docs.google.com/viewer?a=v&q=cache:apijDx61SFkJ:www.gcmr.org.uk/client/area2/downloads/Code%2520of%2520Ethics,%2520Conduct%2520and%2520Practice.pdf+massage+ethics+code&hl=en&gl=us&sig=AHIEtbRDnR1pUUs0GMIICyr2FNGuCbjuw>. Also the AHBMT's Code at <http://www.ahbmt.org/what.html>.

<sup>44</sup> AMTA, *Code of Ethics*, undated, <http://www.amtamassage.org/about/codeofethics.html>

<sup>45</sup> ABMP, *Code of Ethics*, 2009, [http://www.abmp.com/about/code\\_of\\_ethics.php](http://www.abmp.com/about/code_of_ethics.php)

<sup>46</sup> IMA Group, *Code of Ethics*, undated, <http://www.holisticbenefits.com/ima/index.html#codeofethics>

<sup>47</sup> Florida State Massage Therapy Association, *Your Rights, Our Ethics and Reports*, 2008,

<http://fsmta.org/about/rights-ethics-reports/>