

...MORE ETHICS

By

Shirley Henderson

Apollo Correspondence Classes

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Apollo Correspondence Classes
21162 Banff Lane
Huntington Beach, CA 92646

<http://apollo123.com>

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The order of the Standards has been slightly rearranged in some instances to permit the discussion of like topics together.

A chart listing where each Standard is discussed in the book appears after the text.

About the Author

Shirley Henderson has been a massage therapist since 1979 and became nationally certified in 1995. She is also a licensed esthetician and holds a bachelors degree in Global Studies from National University. She has worked as an employee, employer, sole practitioner and business owner in the massage industry. She lives in Huntington Beach, California and was a single mom. Ms. Henderson loves animals, and has two cats and a dog.

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Chapter 1

“adhere to the NCBTMB Code of Ethics, Standards of Practice, policies and procedures”

--NCBTMB Standards of Practice I (a)

“comply with the peer review process conducted by the NCBTMB Ethics and Standards Committee regarding any alleged violations of the NCBTMB Code of Ethics and Standards of Practice”

--NCBTMB Standards of Practice I (b)

“conduct themselves in a manner in all settings meriting the respect of the public and other professionals.”

--NCBTMB Standards of Practice I (c)

“treat each client with respect, dignity and worth”

--NCBTMB Standards of Practice I (d)

While the point of certification means you meet certain qualifications, in the case of the National Certification Board for Therapeutic Massage and Bodywork, it also means that the therapist adheres to a protocol. Licensing jurisdictions have a protocol as well which is enacted into a law.

Just as a licensing jurisdiction can suspend or revoke a license because the licensee broke a law, a certifying agency can suspend or revoke a certification if standards and rules are in place and the holder violates those standards or rules.

Unfortunately, even if it is your day off and it's nobody's business, your professionalism could be evaluated based on off-duty appearance and behavior. This is not particularly fair but it is a fact of life. The up side of this is that you are your own walking advertisement. What you want to convey is all in your hands.

The author recalls a trip to Mexico in which she and a co-worker stumbled into a nightclub after an all day fishing trip, looking like something the cat dragged in and maybe laughing a bit too loud. Before the evening was over they had spotted not one but two separate clients.

Clothing says a lot about professionalism. For example, if providing massages to surfers, dressing for the beach should still have a professional tone, even if it is volunteer work. A sexy bathing suit would be inappropriate. Of course, even though others may be "letting it all hang out," to use a sixties expression meaning without restraint, it is wise for the massage professional to maintain a higher standard. By the way, this is not suggesting that certain clothing has to be worn. White coats, for example, some would find hot and cumbersome and impossible to work in. Nor is a medical type setting required.

Notice how people who have been in the industry a while have gravitated to a theme. The author remembers a previous business and the individuals who worked there: Nancy liked the mystical aspect of massage. She had a collection of crystals and was strong on energy work. Liz was a seasoned bodybuilder whose knowledge and connections to the bodybuilding industry fed her business. Nick was a vegetarian who was also a distributor of natural supplements and did a therapy that has never been taught in a regular massage school. Cathy, a former nurse, gravitated to a strict medical theme. It was the best group the author had ever worked with. Each person had their own interpretation of massage and could still blend into other areas. We often took medical

referrals and people like Nancy, with her mystical theme, never let it conflict with her responsibility to the doctor or patient. Therefore, in an industry such as this there is a lot of room for creativity as long as it is seasoned with appropriateness.

Massage has come a long way. The therapist's behavior maintains this progress. When dealing with other professional, such as doctors, therapists should behave so as to continue to merit this respect. But the industry should also expect to be treated with such dignity by other professions. If this attitude is not forthcoming, the therapist may need to educate the other professional. In no circumstances should the therapist suffer disparagement of the massage or bodywork industry.

It has been the author's experience never to prejudge or judge a person. It is usually surprising, in a most pleasant way, to discover what the person is really like after you get to know them. A therapist can get a lot of mileage from treating a client with respect, dignity and worth. Not being judged gives the client an opportunity to make a good impression, something they may not feel inclined to do if treated indifferently or badly. It makes them loyal and more connected to the therapist. A side benefit is the therapist can feel better for doing it, and is less likely to be too self-critical.

Imagine a physician mistreating a patient in such a way as to make them feel hurt or insulted. It is not likely to happen. The words "bedside manner" were not coined for nothing. The doctor is a person who had many years of college, medical school, internship and specialization. They hold the patient's safety in their hands....and yet...they keep their bedside manner in check (If they're smart).

The author was speaking with a friend the other day about a doctor the friend was planning to return to even though the doctor

had done a botched job. “Then why go back to him!” I demanded. “Because I like him, he makes me feel comfortable and he’s a good guy,” she replied. Amazing!

Chapter Summary

- Professionalism could be evaluated based on off-duty appearance and behavior.
- In the massage/bodywork industry, there is a lot of room for creativity as long as it is seasoned with appropriateness.

Chapter 2

“use professional verbal, non-verbal and written communications.”

--NCBTMB Standards of Practice I (e)

To know and use the terminology of the industry when speaking or writing shows professionalism. The therapist who becomes sloppy or lazy in communication loses the confidence of others. On the other hand, “jargon” which the client doesn’t understand should be avoided.

Care should be taken with spelling, even in e-mails. Nothing detracts more quickly from a reputation than a carelessly misspelled word. A good dictionary should be at hand. If one is not, a dictionary is online at <http://www.dictionary.com>.

Advertising is the first impression. List credentials and experience where applicable. It is an important feature of professional communication. What does that say about you, the therapist? What is being offered ought to be clearly stated. Ads should be free of possible sexual innuendo; they should not be capable of misinterpretation. This is especially true if parts of the body are shown, as in a picture of someone being massaged. Study your ad from the reader’s point of view to avoid overlooking possible blunders.

Attitude is a big indicator as to whether or not the therapist is a professional. If the therapist is having a bad day, this should be kept to one’s self and not allowed to intrude in the workplace. “Dumping” in the workplace loses the respect of others.

Some therapists use clients as sounding boards. Clients are

not paying to hear therapists' troubles. If a therapist looks sad or tired, the client will become uncomfortable and may even begin to identify with the therapist's feeling. This makes for an unhappy session and the unlikelihood of repeat business. This form of self indulgence is distracting in the workplace.

For the brief time each client is with you, your concentration must be on them. Looking hurried or distracted conveys a poor message. You will not be seen as caring or compassionate and the effect will be unwelcoming. **A calm and serene demeanor works better.**

Clients do not want to feel the therapist is squeezing them in among personal agenda items or seeing them as just a way to make money. If the client does not think the therapist has their interest at heart, why would he/she want the therapist touching them? Clients have to trust their therapist or they will drift off looking for something else.

Be aware that everything is a communication. It is not just your voice. It is your appearance, the speed of your speech, movements, the look in your eyes and on your face, the way you stand, the way you answer the phone and the way you sign up the client. **Proper clothing is also a powerful non-verbal communicator.**

When all these verbal and nonverbal elements are considered they present a unified picture of the professional.

Chapter Summary

- Care should be taken spelling, even in e-mails. Nothing detracts more quickly from a reputation than a carelessly misspelled simple word.
- Advertising is the first impression and care should be taken that

the ad is free from sexual innuendo.

- Be aware that everything is a communication.

Chapter 3

“provide an environment that is safe and comfortable for the client and which, at a minimum, meets all legal requirements for health and safety.”

--NCBTMB Standards of Practice I (f)

Know your local ordinances if applicable. This is available from the city clerk's office. It is often available online. Know what the health department's requirements are, if any, pertaining to your type of clinic.

There may be state requirements for accommodations for the handicapped such as wheelchair accessibility and bathroom and shower handrails. Know how to get a handicapped person onto the table. A person with a bad back may not be able to use a soft chair. On the federal level, see the discussions of the Americans with Disabilities Act elsewhere in this book (chapter 11). Be prepared for all situations.

Maintain the practices that school taught regarding health and safety. Incorporate them with any requirements on state or local levels.

Do not allow smoking in the establishment. It may be illegal in any case. Even if it is not, there is a health factor which must be considered. Cigarette smoke dirties the walls and may irritate nonsmoking clients as well as cling to their hair and clothing. Not to mention some are offended when exposed to a known carcinogen.

Use of perfume may be irritating to some; caution is advised. Natural scents may be a better choice.

Colors should be soothing and subdued. If the décor has a theme, make sure the theme is harmonious with the profession. Pleasant lighting and nicely colored walls can do it all.

Pets should not be in the immediate area (except for those required for the client's health, such as seeing-eye dogs).¹ It is amazing how many people are allergic to animals. If you work out of your home, the treatment room ought to be off limit to pets. An inexpensive portable air filtration system will assist in keeping the room dander-free.

Many chemicals are used in homes and offices. Some people are more sensitive than others. If a clinic has chemicals and fumes lingering in the air or on surfaces, it may adversely affect the client. Good ventilation will help. For example, bleach is often used as a germicide but should not be inhaled. An EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity is a good choice for cleaning non-electrical instruments and equipment and can be purchased at beauty supply stores.

Inadequate lighting is another safety hazard. Massage is generally given in subdued lighting. Stay aware that clients coming from bright sunlight may not see well until their eyes have had a chance to adjust. For some, particularly the elderly, this may take a long time. Sufficient light should be available for the client until the client is on the table.

The clinic should be uncluttered so there is nothing for the client to trip over or maneuver around. It's a good idea to have a "spring cleaning" once in a while to discard the materials which accumulate; the sparser the better. It is safer, easier to maintain, and appears cleaner and more professional. A clinic may be open

¹ A fast food restaurant was sued for allegedly repeatedly throwing out a customer's seeing eye dog. KNX Newsradio 1070 (Los Angeles, California), September 3, 2004

after other offices are closed, engendering additional safety concerns. The clinic should be situated in as safe a location as possible. Speak to neighbors and check police records to see that it is not a trouble area.

Make sure the clinic is in good repair. The therapist may remember a loose tile or raised floor area but the client may not. Hazards which cannot be moved (such as a low beam) merit signs. Showers and sink areas are extremely vulnerable to slipping. Take every precaution; a person can sustain a life long injury from a fall. Seek out large rubber mats, post caution signs and check the area often to make sure there is no water on the floor.

Repair work being done should be isolated from the clients, preferably done when the clinic is closed. This avoids the possibility of freak accidents; not to mention disturbing the client and appearing unprofessional.

The therapist should be aware of the nearest fire extinguisher and how to use it. In some cities, the fire department does periodical inspections to make sure extinguishers have been serviced. If they do not in your area, you might mark your calendar for servicing. There are many scenarios in which a fire extinguisher might be needed.

Liability insurance is a good idea and may be required by law and/or the landlord if renting. Many massage organizations and at least one massage magazine offer this insurance to their members. Insurance through a secondary profession, if it is similar, may cover your therapy work but you might want to get that in writing if the policy does not specifically mention massage or bodywork. The same goes for anyone for whom you work; you would need a copy of their insurance to make sure it applies to you. Having liability insurance helps you negotiate and pay. Not having it, depending on the laws that govern your profession, may impact

you license and, depending on the laws that govern your profession, may impact your license.

The state of the therapist's health is another safety factor. If the therapist is ill, he/she should refrain from giving treatments and contaminating the clients or area. Some illnesses require a day or two after the symptoms have left before they become non-contagious. Other illnesses, such as pink-eye, may require an examination from a doctor to determine if it is no longer a threat.

Colds and flu are almost impossible to hide because of the intimacy of the therapeutic setting. Every little snuffle or subtle clearing of throat can be heard by the client; there is no room for deception. If the client gets sick, even if the illness is rampant such as a widespread flu which they did not contract from the therapist, the therapist will be likely be blamed if she/he worked while ill. This provides an opportunity (albeit a forced one) to take care of oneself and take a little break from working. The treatment room might also be suspected. The cleaner and tidier it is kept, the less likely that blame will occur. The same goes for the appearance of the therapist.

Chapter Summary

- There may be state requirements for accommodations for the handicapped such as wheelchair accessibility and bathroom and shower handrails.
- Maintain the practices that school taught regarding health and safety. Incorporate them with any requirements on state or local levels.
- Make sure the clinic is in good repair.

Chapter 4

“use standard precautions to insure professional hygienic practices and maintain a level of personal hygiene appropriate for therapists in the therapeutic setting.”

--NCBTMB Standards of Practice I (g)

Cross contamination results in germs spread from one person to another due to lack of sanitary precautions. There are a number measures which can be taken to avoid this.

Make sure the table is upholstered with vinyl or some other material which can be sanitized. Do not re-use any towel or sheet that was used or intended to be used on a previous client. Everything set up for the previous client should be removed from the massage area before the next client is admitted into the area to prevent accidental reuse.

Any product the therapist uses must be kept germ-free. The exterior of squeeze bottles should be cleaned and sanitized between clients. If applicator wands are used, they should be sterilized or discarded after use. To avoid cross contamination by double-dipping an applicator wand into a product, be sure to have an immediate receptacle for used items. If a second application of the product is required for the client, a second applicator should be used so the product is not contaminated.

Any tools used with clients must be capable of being sanitized or sterilized between clients or else disposable. There are several germicides on the market made especially for this purpose. Follow the manufacturer's directions for any equipment which is used. For example, a hot pad, if improperly applied, can burn the

client's skin. There should be sufficient towels placed between hot pad and skin. Hot stones are another consideration. Some skin types cannot tolerate much heat.

Linen should be kept in a cabinet or closet with a door. A sign indicating it contains clean linen needs to be posted on the cabinet/closet. Soiled linen should be kept in a hamper or separate area and clearly marked.

To avoid cross contamination, do not provide bar soap. Soap should be in a soap dispenser. Restroom dispensers (toilet paper, seat protectors, paper towels, soap) should be monitored and kept restocked.

Areas with running water (bathroom, laundry) should have washable floors and walls.

The therapist should wash hands thoroughly² between clients with a soap or other disinfectant and nail brush. Nails should be kept trimmed. Because of the close proximity between client and therapist, body or breath odor is easily detected. Diligent hygiene is the best way of preventing an unpleasant situation. The therapist's clothing should be clean and in good repair.

Any germs the client is exposed to in the clinic, the therapist is exposed to as well. This Standard of Practice benefits the therapist as well as the client.

Chapter Summary

- Everything used by the previous client should be removed from the massage area before the next client is admitted.
- Avoid cross contamination.

² Oprah Winfrey had an expert on her show who said one should wash hands for as long as it takes to sing "Happy Birthday."

Chapter 5

“wear clothing that is clean, modest, and professional.”

--NCBTMB Standards of Practice I (h)

Massage is a unique industry. It is presented in various themes. One clinic may look like a doctor's office: white walls, vinyl flooring and the staff wear white uniforms. Down the street, there can be an office offering the same treatments but the ambiance is earthy and spiritual. Wide varieties of settings and clothing are considered to be professional in the context of bodywork and massage. Some therapists simply wear comfortable clothing which may not suggest any theme at all but the clothing is not awkward or out of place for doing bodywork.

Neat, clean cloths in good repair convey professionalism. Clothing that is sexually suggestive is never considered appropriate in the massage/bodywork field. An important early impression the client receives is the therapist's clothes.³ This is seen even before they actually look at the therapist. Clothes say who the therapist is, what the therapist's intent is, and how interested the therapist is in the role. Movies define characters by the way they dress. The Lone Ranger never wore a dark hat. Darth Vader never wore white. The professional stays in character, assuring the client they are being treated by an expert whom they can trust.

Chapter Summary

- Neat clean cloths in good repair convey professionalism.
- Clothing that is sexually suggestive is never considered appropriate in the massage/bodywork field.

³ The first impression is the ad or word of mouth; the second is the phone call, the third is the location and building.

Chapter 6

“if applicable, conduct an accurate needs assessment, develop a plan of care with the client, and update the plan as needed.”

--NCBTMB Standards of Practice I (j)

In terms of the client, a “needs assessment” and “plan of care” is an assessment of the condition of the client and plan for treatment. Outside of massage strictly for the purpose of relaxation, the client wants to see development as treatment progresses. Assessing their needs and developing a plan of care can be essential in obtaining that outcome. Prewritten questions are better than merely asking the client what the problem is as people don't always remember everything that's been bothering them unless specifically asked. Keeping accurate records help assess what therapy works best for the client. These records of proven therapies will also be applicable to future clients with similar conditions.

Over time most therapists eventually stray somewhat from the school formula and develop new techniques: techniques that suit their strength, body type and temperament. Even the therapist who has developed new skills will need to keep records.

Record keeping is particularly applicable when working for another professional. The other person will want to see what progress was made and make sure their instructions were followed. Certain professions may be more inclined to use these records in a legal capacity which stresses the need for accuracy. Less than accurate records might lead a client to receiving a smaller award or judgment than otherwise.

Your role may be part of a larger plan of care embodying other disciplines and other providers.⁴ Not doing your part correctly may create a hole that disrupts the entire process.

The NCBTMB requires the therapist keep client records. The licensing agency will likely have requirements along that line as well. At some point it client records may protect you in a civil suit or from a civil suit.

Chapter Summary

- Keeping accurate records will allow you to find out what works best for the client.
- Keeping accurate records in a team setting supports the best functioning of the team's treatment strategy.

⁴ Cincinnati Children's Hospital Medical Center, *Massage Therapy*, 1999-2004, <http://www.cincinnatichildrens.org/svc/prog/hospice/svc/massage.htm?view=content>; The Center for Health and Healing, *What We Do*, undated, <http://www.humed.com/healing/what.shtml>, Hackensack University Medical Center.

Chapter 7

“refer to other professionals when in the best interest of the client and/or practitioner”

--NCBTMB Standards of Practice I (m)

“seek other professional advice when needed.”

--NCBTMB Standards of Practice I (n)

Referring clients to one another generates business. That way everyone gets the clients that most benefit from their work and are more likely to be loyal. The sessions are easier and there is no reason to hard sell. Chances are the referred will return occasionally if not permanently and will refer friends as well.

When you have a group that are referring, everyone should be getting the same amount of clients back that they send out, especially if they make it plain that is the deal.

“No man is an island, entire of itself; every man is a piece of the continent, a part of the main,” wrote John Donne in 1624.⁵ There may be times when situations present themselves where the therapist needs experienced help.

This may be a question of technique of how to deal with a specific client. Other therapists, with their experience, may have plenty of stories and ideas. Sharing ideas is a shortcut in the learning experience.

⁵ John Donne, *Meditation 17*, 1624, <http://www.santacruzpl.org/readyref/files/a-b/belltoll.shtml>.

There may be a question which can be answered by another discipline. The therapist may need assistance in setting up good financial record keeping or advice on how to comply with the Americans with Disabilities Act. The proper professional should be sought out and consulted.

One of the most dangerous things to do with a problem is nothing. Problems tend to fester. Sometimes *any* action is better than doing nothing because it's a positive step forward, off the first square. Simply communicating the problem to another may be the first step to setting up a plan to solve it.

Of course, sharing with another therapist or other professional should be done while respecting the client's privacy. It may be necessary to omit the name or other identifying characteristics before conveying information. To reveal the client would constitute gossiping and may even lead to a suit for violation of privacy.

Particularly for therapists practicing alone, getting together with others in the industry periodically just to shoot the breeze is beneficial. If you are working alone, you may become too isolated. Sometimes this is not a healthy situation. Dining out with others in the same business, laughing and sharing work stories can reset one's perspective.

For the Internet minded, <http://www.yahogroups.com> has 1,345 e-mail groups about massage. In an e-mail group, any member can send a message to a central e-mail address and the message is distributed almost instantly to all other members. Many of the massage e-mail groups are made up of therapists sharing information. This can be a good way to let off a little steam or to get new ideas.

There are formal meetings where therapists can meet one another, learn, and exchange ideas. For example, the American Massage Therapists Association holds an annual convention lasting four days. The same organization also offers local and regional conferences.⁶

Chapter Summary

- There may be times when situations present themselves where the therapist needs experienced help.
- Sharing with another therapist or other professional should be done while respecting the client's privacy.

⁶ American Massage Therapy Association, *AMTA Chapters Offer Additional Member Resources*, 2004, <http://www.amtamassage.org/ChapAddMemResources.html>.

Chapter 8

“respect the traditions and practice of other professionals and foster collegial relationships.”

--NCBTMB Standards of Practice I (o)

The value of massage and bodywork in assisting other therapies is widely recognized. The therapist should be careful to treat therapists of other modalities with respect and to expect the same in return.

They should try to speak well of one another in conversation and to uphold one another’s professional reputations, if the facts justify this. Bear in mind, criticism of your peers can reflect poorly on the industry.

The massage therapist world is fairly small. As of this writing, the American Massage Therapists Association has 50,000 members.⁷ There are 60,000 therapists certified by the NCBTMB.

In the therapist community, word gets around quickly. Everybody eventually knows what everyone else is doing. Sometimes this leads to strained relations and feuds. Price cutting and bad mouthing the competition is an example of things that can cause problems.

However, fostering relationships with others can lead to special friendship bonds that last forever. Building collegial relationships suggests therapists should engage in a courtesy which overcomes minor irritations. Practically, there may come a time

⁷ American Massage Therapy Association, (home page), 2004, <http://www.amtamassage.org/>. Despite the name, the members are located in 27 countries.

when the local therapist community will need to stand together, as when a jurisdiction holds hearings for new massage legislation. Being united in time of need will be easier if the community has been building bridges all along.

Recently a bill was before legislature to initiate a certain state's licensing of massage. This is generally held to be desirable by the massage industry (many states have state licensing.) But, according to the bill's sponsor, squabbles between the various massage interests and groups and their inability to decide on what the bill should contain caused the bill's sponsor to withdraw the proposed legislation. A more congenial behavior might have given everyone what they ultimately wanted; state licensure. The absence of a state license for that particular state means many therapists will continue to be chained to lengthy and often expensive application procedures conducted by cities that are free to devise all sorts of difficulties for the applicants; whether intentional or through ignorance of the industry. In a state with local licensing, changing jobs to another town usually means a therapist must go through a whole new licensing procedure, something which usually is not required or at least considerably streamlined in a state-licensed jurisdiction

Mutual support is necessary to grow a business. Therapists should not solicit one another's clients.⁸ Therapists should not use underhanded means to obtain clients from others. This sometimes occurs when therapists are working for an employer; they may attempt to move a client away from the office into a more private practice in their or the clients home. This poses an ethical issue. Not only is the employer taken advantage of, so are any other employees who then do not have an opportunity to serve that client. Loss of business may ultimately affect others' salary or

⁸ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

jobs. In the massage bodywork industry more income is generated when therapists support each other in building the business.

A therapist may be told of another therapist's problems or issues. While there may be no legal grounds to keep this information to oneself, doing so enhances collegial relationships. This confidentiality does not apply when the other therapist is doing something which violates the law; in that case, the therapist has an obligation under the NCBTMB Standards of Practice to report this.

Chapter Summary

- The therapist should be careful to treat therapists of other modalities with respect and to expect the same in return.
- therapist should not use underhanded means to obtain clients
- Not only must clients' privacy be respected but the privacy of colleagues is also a concern

Chapter 9

“not falsely impugn the reputation of any colleague.”

--NCBTMB Standards of Practice I (p)

Impugning the reputation of a colleague could mean something as simple as complaining about a behavior you find disagreeable to something more libelous. Based on many years of experience, this author believes that the massage/bodywork industry tends to attract creative and eccentric people but usually no one who a compassionate therapist could not get along with. Decide what is petty and what is necessary before you act. This is a very delicate area and caution should be exercised especially when criticizing a person’s ethics or accusing them of a misconduct.

If there is some behavior on the colleague’s part that a therapist feels should be discussed with someone, then understanding the libel laws will prevent you from not only being sued but help you to weigh the accuracy of your accusation. Libel is a “false published statement that injures an individual’s reputation (as in business) or otherwise exposes him or her to public contempt.”⁹

Generally the person libeled must prove the libel refers specifically to him or her, that it was published to others and that it caused injury requiring damages.¹⁰ Although, some statements were traditionally held to be damaging by their utterance and

⁹ Findlaw for Legal Professionals, *libel*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=62/626991787281dec90623b89f93d49694>.

¹⁰ Findlaw for Legal Professionals, *libel*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=62/626991787281dec90623b89f93d49694>.

damages could be assumed. Libel can also be committed by e-mail.¹¹

It is harder to libel a public figure. If the therapist allegedly libeled is well known, on television, or in the press, the therapist may be a public figure. In order to libel a public figure, the person doing the libel must know the statement is false or must have “reckless disregard” for whether the statement is true or not.¹²

Libel differs from slander in that libel involves a written communication¹³ whereas slander is oral.¹⁴

It is hard to libel/slander large groups. “All lawyers are crooks” is not actionable. The court needs to be able to identify a particular person or persons who were injured.¹⁵

Libel and slander require that the false statement be communicated to a third person. Examples of what the courts have held to be libel or slander include false statements that a person is unfit for or dishonest in a job; has committed a crime capable of imprisonment; has a loathsome, contagious disease; or has been sexually unchaste.¹⁶

The “third person” is important. If one is on the beach alone at midnight and says “X gives a lousy massage” or tells X “You

¹¹ Free Advice, *Are Laws Regarding Defamation Applicable to E-mail and Other On-Line Activities?*, undated, http://injury-law.freeadvice.com/libel_and_slander/internet_defamation.htm.

¹² US Supreme Court in *NY Times v. Sullivan*. Findlaw for Legal Professionals, *libel*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=62/626991787281dec90623b89f93d49694>.

¹³ Free Advice, *What is “Libel”?*, undated, http://injury-law.freeadvice.com/libel_and_slander/libel.htm.

¹⁴ Free Advice, *What is Slander?*, undated, http://injury-law.freeadvice.com/libel_and_slander/slander.htm.

¹⁵ Dancing With Lawyers, *Libel, Slander, and Defamation of Character*, 1998-2004, <http://www.dancingwithlawyers.com/freeinfo/libel.shtml>.

¹⁶ Scott Law Firm, *Libel/Slander*, 1998-2003, [http://www.scottlawfirm.com/libel.htm#Introduction to Libel and Slander](http://www.scottlawfirm.com/libel.htm#Introduction%20to%20Libel%20and%20Slander).

sure give a lousy massage,” one has not committed libel or slander because one has not communicated the statement to a third party.¹⁷

Being merely offensive or insulting is not libel.¹⁸ One can libel/slander a corporation as the corporation is seen as a person under the law.¹⁹ Some massage clinics may be incorporated.

The person accused of libel or slander can defend by proving the statement is true.²⁰ Taking due care before making the statement will probably defeat a libel or slander action.²¹ Some jurisdictions may exempt reports of misconduct to the proper authorities from libel/slander.²²

The person who has been libeled can receive actual damages in court (to cover the real damage suffered) and punitive damages (to punish the person who did the libel or slander and to discourage others from doing the same thing.)²³

Chapter Summary

- A therapist should take care to have a reasonable belief that a statement is true before making an accusation about a colleague.

¹⁷ Media Law Resource Center, *Libel FAQs*, undated, http://www.ldrc.com/LDRC_Info/libelfaqs.html.

¹⁸ Media Law Resource Center, *Libel FAQs*, undated, http://www.ldrc.com/LDRC_Info/libelfaqs.html.

¹⁹ Media Law Resource Center, *Libel FAQs*, undated, http://www.ldrc.com/LDRC_Info/libelfaqs.html.

²⁰ Free Advice, *Can I Sue Someone Who Says or Writes Something Defamatory About Me?*, undated, http://injury-law.freeadvice.com/libel_and_slander/defamatory_statements.htm.

²¹ Media Law Resource Center, *Libel FAQs*, undated, http://www.ldrc.com/LDRC_Info/libelfaqs.html.

²² Media Law Resource Center, *Libel FAQs*, undated, http://www.ldrc.com/LDRC_Info/libelfaqs.html.

²³ Free Advice, *What Damages Are Available for Libel or Slander?*, undated, http://injury-law.freeadvice.com/libel_and_slander/libel_damages.htm.

Chapter 10

“use the initials NCTMB to designate his/her professional ability and competency to practice therapeutic massage and bodywork only, or the initials NCTM to designate his/her professional ability and competency to practice therapeutic massage only.”

--NCBTMB Standards of Practice I (q)

“remain in good standing with NCBTMB and maintain the NCBTMB certification.”

--NCBTMB Standards of Practice I (c)

“understand that the NCBTMB certificate may be displayed prominently in the certificant’s principal place of practice.”

--NCBTMB Standards of Practice I (s)

“use the NCBTMB logo and certification number on business cards, brochures, advertisements, and stationery only in a manner that is within established NCBTMB guidelines”

--NCBTMB Standards of Practice I (t)

“not duplicate the NCBTMB certificate for purposes other than verification of the therapist’s credentials.”

--NCBTMB Standards of Practice I (u)

“immediately return the certificate to NCBTMB if certification is revoked”

--NCBTMB Standards of Practice I (v)

“inform NCBTMB of any changes or additions to information included in his/her application for NCBTMB certification or recertification”

--NCBTMB Standards of Practice I (w)

“Massage therapists and bodyworkers shall act in a manner that justifies public trust and competence, enhances the reputation of the profession and safeguards the interests of individual clients.”
NCBTMB

The NCBTMB expects therapists to display the logo and certificate. It demonstrates and promotes a national standard. It supports and furthers the industry’s reputation. **Using the NCBTMB logo demonstrates the therapist has passed certain standards of professional ability.** One knows the college one attends is acceptable if it approved by a regional accrediting agency. The NCBTMB is providing a similar service verifying therapists.

The Board does have several concerns though. They want the certificate to be used only to establish professional ability or competency in massage or bodywork. Good work in massage and body work should not be hyped into something else that is untrue—stay within the scope of practice.

The only reason the certificate should be duplicated is again to prove professional ability or competency in the field. In Frank W. Abagnale’s fascinating book *Catch Me If You Can*, lately made into a movie, he describes having a pilot’s license duplicated and using it to get into cockpits. The therapist should keep an eye on the certificate to make sure it is not misused by anyone else.

The certificate should be displayed at the primary place of business.

The NCBTMB standards are also concerned the therapist remains in good standing and if that becomes not true, the NCBTMB may rescind therapist certification. Continuing education in NCBTMB ethics and standards, such as those offered by Apollo Correspondence School, is a convenient way to gain knowledge in the NCBTMB requirements. Even if there are problems, the Ethics and Standards Committee may just require further education instead of probation or revocation.²⁴ In the legal field, if lawyers cooperate with the investigation and express remorse, that is taken into consideration in determining the penalty. Sincerity and cooperation influences the outcome of disciplinary action in nearly all fields and situations.

Since the National Certification Board is also a source of referrals, it is a good idea to keep your file with them up to date, and this standard makes it a requirement. Having the wrong information or poor information may lead to confusion down the line.

Chapter Summary

- The only reason the therapist's certificate should be duplicated is to prove professional ability or competency in the field.
- The certificate should be displayed.

²⁴ National Certification Board for Therapeutic Massage and Bodywork, *Ethics and Standards*, 1999-2001, http://www.ncbtmb.com/ethics_&_standards.htm.

Chapter 11

“obey all applicable local, state, and federal laws.”

--NCBTMB Standards of Practice II (a)

There are laws that cover nearly every situation. An accountant at a small Texas gas and oil firm estimates she spends one week a month just on government forms and reporting.²⁵ Congress makes laws. Then federal agencies generate regulations. Each state has a legislature, under which are more agencies creating more regulations. The county has ordinances. Finally the city or town is churning out more laws.

Federal law includes the Americans with Disabilities Act (ADA), anti-discrimination measures and taxes. The ADA was signed into law in 1990.²⁶ Title III requires new public accommodations and facilities being remodeled to be accessible to the disabled.²⁷ It requires existing buildings to have barriers to disabled access removed if readily achievable²⁸ and to provide auxiliary aids and services.²⁹ The accessibility provisions apply regardless of the size of the business. A person is regarded as disabled if the person has, has a record of, or is regarded as having, a physical or mental impairment which substantially limits a major life activity.³⁰ Under other federal laws, it may be illegal to deny

²⁵ William D. Eggers, *Indirect Return on Investment*, August 2003, <http://www.public-cio.com/story.php?id=2003.08.01-62608>.

²⁶ Job Accommodation Network, *ADA: A Brief Overview*, 1997, <http://www.jan.wvu.edu/links/adasummary.htm>.

²⁷ Job Accommodation Network, *ADA: A Brief Overview*, 1997, <http://www.jan.wvu.edu/links/adasummary.htm>.

²⁸ Job Accommodation Network, *ADA: A Brief Overview*, 1997, <http://www.jan.wvu.edu/links/adasummary.htm>.

²⁹ (United States) Department of Justice, *Americans with Disabilities Act: ADA Business Connection*, December 2003, <http://www.usdoj.gov/crt/ada/business.htm>.

³⁰ Job Accommodation Network, *ADA: A Brief Overview*, 1997, <http://www.jan.wvu.edu/links/adasummary.htm>.

service to a client based on that client's race, color, religion, sex, national origin, or age.³¹ Perhaps the most pervasive federal influence in a small business's life is the Internal Revenue Service (IRS). More information is available at <http://www.irs.gov/businesses/small/index.html>.

States authorize the school therapists attend and often assess taxes. Currently 66% of the 50 states directly regulate massage.³² (Of the five most populous states, only California does not have state licensing.) This is probably a tremendous convenience to the therapist who may be able to move the business within the state without re-licensing. In states where massage is regulated by the cities, moving two miles from one town to another can often involved a lengthy re-application process.

Counties may have regulations of which to be aware. In California, for example, counties require businesses which are not operated in the owner's name ("Sally Johnson") to file a fictitious business name statement, for which a fee is charged.³³ State law provides that a business cannot sue unless such a statement has been filed.³⁴

In a minority of states, about one-third (including the largest, California), massage is licensed locally or at the county level. Also at these levels are building and zoning codes and business licensing.

³¹ U.S. Commission on Civil Rights, *Getting Uncle Sam to Enforce Your Civil Rights*, undated, <http://www.usccr.gov/filing/flndx.htm>.

³² Natural Healers, *Massage Therapy Schools Q & A*, 1999-2003, <http://www.naturalhealers.com/qa/massage.html#q9>.

³³ County of Los Angeles Registrar-Recorder/County Clerk, *Naming Your Business*, undated, <http://lavote.net/clerk/naming.htm>.

³⁴ County of Los Angeles Registrar-Recorder/County Clerk, *Naming Your Business*, undated, <http://lavote.net/clerk/naming.htm>.

Chapter Summary

- Federal, state, county, and city governments all have laws of which the therapist should be aware.

Chapter 12

“refrain from any behavior that results in illegal, discriminatory, or unethical actions.”

--NCBTMB Standards of Practice II (b)

Federal law protects from discrimination based on race, color, religion, national origin,³⁵ or sex.³⁶ Violations can even be a crime which will be prosecuted by the U.S. Department of Justice.³⁷ Federal regulation to level the playing field and prevent discrimination began during the Civil War with the Thirteenth Amendment to the federal constitution.³⁸ The impetus died after 1900 until the end of World War II.³⁹ Progress following the war included most notably the Supreme Court’s decision in *Brown vs. Board of Education*.⁴⁰ The first federal civil rights law of the twentieth century, however, was not passed until 1957.⁴¹

In a breathtaking speech on June 11, 1963, President Kennedy said to the nation on television, “This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every

³⁵ http://www.hg.org/cgi-bin/redirect.cgi?url=http://www.law.cornell.edu/topics/civil_rights.html. Web site down.

³⁶ United States Department of Justice, *Civil Rights and Liberties Violations*, April 2004, <http://www.usdoj.gov/civilliberties.htm>.

³⁷ United States Department of Justice, *Civil Rights and Liberties Violations*, April 2004, <http://www.usdoj.gov/civilliberties.htm>.

³⁸ Gordon Leidner, *The Thirteenth Amendment*, 2003-2004, <http://members.tripod.com/~greatamericanhistory/gr02011.htm>, Great American History.

³⁹ Congresslink, *Major Features of the Civil Rights Act of 1964*, undated, http://www.congresslink.org/print_basics_histmats_civilrights64text.htm, The Dirksen Congressional Center.

⁴⁰ Congresslink, *Major Features of the Civil Rights Act of 1964*, undated, http://www.congresslink.org/print_basics_histmats_civilrights64text.htm, The Dirksen Congressional Center.

⁴¹ Congresslink, *Major Features of the Civil Rights Act of 1964*, undated, http://www.congresslink.org/print_basics_histmats_civilrights64text.htm, The Dirksen Congressional Center.

man are diminished when the rights of one man are threatened....The Negro baby born in America today, regardless of the section of the nation in which he is born, has about one half as much chance of completing high school as a white baby born in the same place on the same day, one third as much chance of completing college, one third as much chance of becoming a professional man, twice as much chance of becoming unemployed, about one seventh as much chance of earning \$10,000 a year or more, a life expectancy which is seven years shorter, and the prospects of earning only half as much.”⁴² It was clear something was very wrong. This led in the following year to the Civil Rights Act of 1964 signed by President Johnson.⁴³

More recently, the federal government has turned its attention to discrimination against the disabled. Section 504, passed in 1973, was designed to eliminate barriers and encourage participation in education and on the job.⁴⁴ In 1992 the Americans with Disabilities Act became effective, requiring businesses constructing or modifying facilities to meet design standards and existing businesses to remove barriers and provide auxiliary aids and services to assist the disabled.⁴⁵

States may expand on the federal anti-discrimination law. Vermont, for example, prohibits discrimination based upon sexual orientation, marital status, place of birth, minor children or receipt of public assistance.⁴⁶ Oregon adds protection to people who are associated with a member of a protected class (one of the categories protected from discrimination), age, and family

⁴² John F. Kennedy, *televised address*, June 11, 1963, <http://www.geocities.com/~newgeneration/civil.htm>.

⁴³ Congresslink, *Major Features of the Civil Rights Act of 1964*, undated, http://www.congresslink.org/print_basics_histmats_civilrights64text.htm, The Dirksen Congressional Center.

⁴⁴ Jan Baumel, M.S., *Section 504 — Federal Civil Rights Law*, October 2002, <http://www.schwablearning.org/articles.asp?r=30>.

⁴⁵ United States Department of Justice, *The Americans With Disabilities Act*, December 2003, <http://www.usdoj.gov/crt/ada/business.htm>.

⁴⁶ Vermont Human Rights Commission, *Mission Statement*, undated, <http://www.hrc.state.vt.us/>.

relationship.⁴⁷

Provisions against discrimination can also be enacted at the city level. Los Angeles, San Francisco, Dallas and Boston, for example, protect gender identity and sexual expression.⁴⁸

As a therapist of the healing arts it would be counter to your profession to behave in an unethical way. The industry lends itself beautifully to the sincere and genuine. The work atmosphere then becomes free and easy. You will draw in good people as clients and doors to other interests and opportunities will open as a result of these connections.

Chapter Summary

- Federal law protects people from some kinds of discrimination.
- State and municipal law may enhance federal protection.

⁴⁷ (Vermont) Bureau of Labor and Industries, *Civil Rights: How to File a Complaint*, undated, <http://www.boli.state.or.us/civil/crprotoc.html#protected>.

⁴⁸ Queer Day, *Oakland Protects Transgender Residents*, December 19, 2003, <http://www.queerday.com/archives/002493.html>.

Chapter 13

“accept responsibility for their own actions.”

--NCBTMB Standards of Practice II (c)

There was a United States president thirty years ago who went on television to say that there was nothing incriminating in the binders behind him containing transcripts of his conversations. It is generally agreed that if the president had taken responsibility even at that point, he would have kept his job. Instead he was the first president to resign.⁴⁹

The resignation is an extreme example. But everyone makes mistakes. There is a certain image of oneself to protect. To protect that picture, one may hide a mistake or make excuses about one's conduct. One may find, however, it is better to be regarded as trustworthy and sincere because they were open than to carry the burden of deception and be thought of as weak or sneaky.

Out of the ashes come growth and often new opportunity. If everything is sailing along with no problems, there is no learning and things appear stagnant. Mistakes shake up the status quo. Author Richard Bach put it this way, “There is no such thing as a problem without a gift for you in its hands. You seek problems because you need their gifts.”⁵⁰ Plenty of big mistakes turned out well. Christopher Columbus was incorrect; he was looking for Asia

⁴⁹ National Archives and Records Administration, *Contemporary United States (1968 to the Present): Resignation of President Richard Nixon*, March 1999,

http://www.archives.gov/exhibit_hall/american_originals/nixon2.html.

⁵⁰

<http://quotes.telemanage.ca/quotes.nsf/QuotesByCatPerson!ReadForm&RestrictToCategory=Richard+Bach>
h. Web site down. The quote comes from one of those extraordinary little books that pop into one's life, *Illusions* (Dell, 1989). Bach takes an unusual look at living and how it is practiced.

and ran into America.⁵¹ Henry Ford, inventor of the Model T car, founded four companies and was unsuccessful with each.⁵² We know what happened with the fifth try. Steve Jobs founded Apple, from which he got fired in 1985.⁵³ Today he's back as chief executive officer of Apple and of the film animation firm Pixar and is generally accounted a genius.⁵⁴ This sort of thing is so common that Harvey Mackay has written a book citing the stories of many superstars; he calls it *We Got Fired! : . . . And It's the Best Thing That Ever Happened to Us*.

Steve Goodier gives a three step process for dealing with mistakes: (A) "Acknowledge your error and accept responsibility for it." He says the problem cannot be fixed if it's not admitted. (B) "Be gentle with yourself." (C) "Correct it and move on."⁵⁵

The people that take responsibility for their actions are continually learning, gaining confidence and making more responsible decisions. Best of all, the people that take responsibility for their own actions are self-governing, no matter what their work situation.

Chapter Summary

- Being consistently up front and honest is going to yield a better reputation than skulking away.
- The people who take responsibility for their own actions are self-governing, no matter what their work situation.

⁵¹ The Mariner's Museum, *Age of Exploration: Christopher Columbus*, undated, <http://www.mariner.org/educationalad/ageofex/columbus.php>.

⁵² Jake, *Henry Ford: The Creator of the Assembly Line*, undated, <http://www.kyrene.k12.az.us/schools/brisas/sunda/inventor/ford/>.

⁵³ Lee Angelelli, *Steve Paul Jobs*, 1994, <http://ei.cs.vt.edu/~history/Jobs.html>.

⁵⁴ Frank Tedesco, *Steve Jobs Information Site*, 2003, <http://www.geocities.com/franktau/>.

⁵⁵ Steve Goodier, *The ABCs of Handling Mistakes*, undated, http://www.consult-me.com/feature_article.htm, Consulting Associates.

Chapter 14

“report to the proper authorities any alleged violations of the law by other certificants or applicants”

--NCBTMB Standards of Practice II (d)

“report to NCBTMB any criminal conviction of, or plea of guilty, nolo contendere, or no contest to, a crime in any jurisdiction (other than a minor traffic offense) by him/herself and by other certificants or applicants”

--NCBTMB Standards of Practice II (f)

“report to NCBTMB any pending civil litigation in which the basis of the complaint against him/herself or another certificant or applicant is alleged negligence, malpractice, lack of professional competence, or sexual misconduct and the resulting resolution of such litigation”

--NCBTMB Standards of Practice II (g)

“report to NCBTMB any pending complaints in any state or jurisdiction against his/her professional conduct or competence, or that of another certificant, and the resulting resolution of such complaint”

--NCBTMB Standards of Practice II (h)

The idea of ratting on someone who has done something wrong may strike Americans as a little discordant. It smacks of Cuba's neighborhood spies who report to the government, the

Neighborhood Vigilance Committee.⁵⁶

Several states impose a duty to report crimes upon citizens.⁵⁷ Colorado even requires a citizen to report if there is a reasonable belief a crime has been committed.⁵⁸

Nonetheless, it is an effective policy. The massage therapist community is relatively small. The AMTA estimates that there are between 200,000 and 250,000 therapists in the U.S..⁵⁹ By comparison, there are about 583,000 doctors and physicians in the country.⁶⁰ In the small world of therapists, particularly at the local level, therapists are consistently hearing about other therapists.

Reporting protects NCBTMB certification and the industry. It works to secure the reputation of both. Policing your own to maintain the standards is not “snitching”—it is keeping the house clean. Unfortunately, if there is even one person goofing off, everyone gets painted with the same brush. The massage and bodywork industry has come a long way into mainstream America where it is accepted more and more as a health promoting therapy. Helping to maintain standards of other certificants is pivotal in keeping the good standing certification offers and gaining new ground in public and political acceptance of the industry.

The Rampart scandal in Los Angeles, California was ignited by one police officer who reported the activities of his fellow officers. He alleged they made false arrests, perjured themselves,

⁵⁶ Jim Garringer, *Flight from Cuba*, July 4, 2001, <http://www.cubanet.org/CNews/y01/jul01/04e7.htm>, The Star Press.

⁵⁷ Robert D. Cooter, *Criminal Law: Duty to Rescue/Duty to Report*, 2000, [http://www.cooter-ulen.com/crime.htm#Duty to rescue / Duty to report](http://www.cooter-ulen.com/crime.htm#Duty%20to%20rescue%20/%20Duty%20to%20report).

⁵⁸ University of Northern Colorado Police Department, *Duty to Report*, 2004, <http://www.unco.edu/police/securityreport/duty.html>.

⁵⁹ http://www.amtamassage.org/publications/career_brochure.htm The figure includes students. Web site down.

⁶⁰ United States Department of Labor, *Physicians and Surgeons*, February 2004, <http://stats.bls.gov/oco/ocos074.htm>. Figure is for 2002.

and framed people who were actually innocent.⁶¹ The revelations resulted in many convictions being overturned.⁶² Nine police officers were prosecuted and more than a dozen others were fired or resigned.⁶³ The *Los Angeles Times* suggests, however, that the officers' code of silence hampered and ultimately retarded the investigation.⁶⁴

Reporting another's possible violations to the proper authorities may be a protected activity. Therapists reporting to the NCBTMB should, however, be careful that there is a reasonable cause for the report. If it turns out the report is untrue, the person reported upon could sue the reporting therapist for libel. Communications to a third person (here the Board) that damage a therapist in the profession or that allege the therapist has committed a crime involving moral turpitude⁶⁵ may be libelous. The person reported on might sue and collect damages from the reporting therapist. The damages might be the actual ones suffered by the wrongfully accused therapist as well as possibly punitive damages—an additional assessment designed to deter the accuser of repeating a similar mistake and to warn others not to do so.⁶⁶ The reporting therapist, however, should be safe if there was reasonable justification for the report; if the reporting therapist was negligent or reported without a basis for a belief in the truth of the report, the accused may have a case.

⁶¹ Public Broadcasting System, *The Rampart Scandal*, 2001, <http://www.pbs.org/wgbh/pages/frontline/shows/lapd/scandal/>.

⁶² Eric A. Chase, *The Rampart Scandal*, 1999, <http://www.smartlaw.org/vlris/index.cfm?FuseAction=ArticleDetail&ID=sl0700>.

⁶³ Scott Glover and Matt Lait, *Ex-Chief Refuses to Discuss Rampart*, August 23, 2003, <http://www.streetgangs.com/topics/rampart/082303ramparks.html>.

⁶⁴ Scott Glover and Matt Lait, *Ex-Chief Refuses to Discuss Rampart*, August 23, 2003, <http://www.streetgangs.com/topics/rampart/082303ramparks.html>.

⁶⁵ J. Neill, 76 *Wn.2d* 733, *Douglas G. Amsbury et al., Appellants, v. The Cowles Publishing Company, Respondent*, September 18, 1969, <http://www.mrsc.org/mc/courts/supreme/076wn2d/076wn2d0733.htm>.

⁶⁶ Free Advice, *What Damages Are Available for Slander or Libel?*, undated, http://rds.yahoo.com/S=2766679/K=%2Blibel+%2B%22punitive+damages%22/v=2/SID=e/TID=DFX5_30/l=WS1/R=4/H=0/SHE=0/*-http://injury-law.freeadvice.com/libel_and_slander/libel_damages.htm.

Chapter Summary

- Reporting protects NCBTMB certification and the industry.
- Therapists reporting to the NCBTMB should be careful that there is a reasonable cause for the report.

Chapter 15

“maintain accurate and truthful records.”

--NCBTMB Standards of Practice II (e)

Accurate and truthful records will allow the therapist to monitor the effectiveness of treatments and technique. The client is looking for some sort of progress even if it is only to feel more relaxed with each session. Record keeping helps in this area. It also allows the client's issues to be recalled without them having to be asked over and over again. Also, you know what the clients issues are without having to ask over and over again as if you don't care enough to remember. Keeping a record suggests to the client a relationship has been formed and that their continued participation is anticipated.

Record keeping is particularly applicable when working for another professional. The other person will want to see what progress is being made and will need the documentation when dealing with the client. Massage may be part of a larger plan of care embodying other disciplines and other providers.⁶⁷

The state may require certain information to be recorded, as the State of New York mandating that disclosures of confidential information be noted in the file.⁶⁸

In all these instances, record-keeping—those kept for the therapist's professional reasons, for other professionals, or for state

⁶⁷ Cincinnati Children's Hospital Medical Center, *Massage Therapy*, 1999-2004, <http://www.cincinnatichildrens.org/svc/prog/hospice/svc/massage.htm?view=content>; The Center for Health and Healing, *What We Do*, undated, <http://www.humed.com/healing/what.shtml>, Hackensack University Medical Center.

⁶⁸ Office of the Professions, *Guidelines for Practice*, 2004, <http://www.op.nysed.gov/mtguide.htm#confid>, New York State Education Department.

requirements—are worthless if not accurate. At best, disclosure of inaccuracies would be embarrassing. In a medical setting, they might lead to incorrect treatments. A state, discovering errors, might consider legal action.

At least one jurisdiction (the State of New York) gives the client the right to inspect the client’s records and take a copy.⁶⁹ The client will expect a professional, accurate presentation.

Accuracy is another good reason for NCBTMB Standards of Practice III (c) which requires soliciting “... only information that is relevant to the professional client/therapist relationship.” Less information should mean fewer possible errors. There is a therapist whose four page intake form is available on the web. One of the items asked for is hobbies. Another therapist’s form on the web asks for ages of the client’s children. If none of this information needs to be in the records per Standard III ©, there is no chance of getting it wrong under Standard II (e). Not to mention, gratuitous questioning appear junky and invasive

Chapter Summary

- Keeping accurate records will improve your business relationships and protect you legally.
- Record keeping is particularly applicable when working for another professional.

⁶⁹ Office of the Professions, *Massage Therapy*, undated, <http://www.op.nysed.gov/massb.htm>, New York State Education Department.

Chapter 16

“respect existing publishing rights and copyright laws, including, but not limited to, those that apply to NCBTMB’s copyright-protected examinations”

--NCBTMB Standards of Practice II (i)

Copyright protects “‘original works of authorship,’ including literary, dramatic, musical, artistic, and certain other intellectual works,” whether published or unpublished.⁷⁰ The holder of the copyright has the exclusive right to reproduce the copyrighted work, to create derivative works from the copyrighted work (for the moment only JK Rowling, the author of the Harry Potter books, can license spin offs to Harry Potter), to distribute the copyrighted work, to perform the work and to display the work.⁷¹ Works consisting of “information that is common property and containing no original authorship” cannot be copyrighted (example: tape measure.)⁷²

Copyright automatically attaches upon the creation of the work.⁷³ So the fact that a manuscript held in the hand holds no copyright notice does not mean it is unprotected.

Copyright does not last forever. For works created on or after January 1, 1978, in the US copyright lasts until 70 years after the

⁷⁰ United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>.

⁷¹ United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>.

⁷² United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>.

⁷³ United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>.

last surviving author's death.⁷⁴ Prior to that date protection, with extension, could last 95 years.⁷⁵

There is an exception to copyright called the fair use doctrine. A brief excerpt of a copyrighted work may be used if it is attributed to the author and does not harm the commercial value of the copyrighted work.⁷⁶ The purpose of the selection must be for commentary, parody, news, research or education.⁷⁷

If the therapist is going to use someone else's work, or quote from it, the therapist should obtain the author's permission or the author of the original work should have been dead for 70 years (thus copyright does not apply) or the excerpt should fall under the fair use doctrine. If someone wanted to create a diary for Daisy, a character in *The Great Gatsby*, the new author would have to wait until 2035 (the waiting period was longer before the 1978 law was passed) since the original author, F. Scott Fitzgerald, died in 1940.⁷⁸ Writing a whole diary "from" Daisy would be a derivative work and not fall under the fair use doctrine. (On the other hand, whoever holds the Fitzgerald copyright might think this a great new idea and perhaps would be willing to give permission for the new work.)

What violations of copyright can cost the infringer is not trivial. The court can order the infringer to pay any damages the copyright holder suffered, any profits the infringer made, and the holder's attorney fees. Or, even if damages cannot be proven, the

⁷⁴ United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>. Anonymous works can be protected as long as 120 years after creation.

⁷⁵ United States Copyright Office, *Copyright Basics*, December 2000, <http://www.copyright.gov/circs/circ1.html#wci>.

⁷⁶ Brad Templeton, *Ten Big Myths About Copyright Explained*, undated, <http://www.templetons.com/brad/copymyths.html>.

⁷⁷ Brad Templeton, *Ten Big Myths About Copyright Explained*, undated, <http://www.templetons.com/brad/copymyths.html>.

⁷⁸ Anonymous, *Francis Scott Fitzgerald*, undated, <http://www.owleyes.org/fitzgerald.htm>.

copyright holder can be awarded “statutory damages” of between \$750 and \$150,000.

If someone wants to use an excerpt of a work which does not fit under the fair use doctrine, a good rule is to ask first.

Chapter Summary

- Copyright protects “original works of authorship.”
- There is an exception to copyright called the fair use doctrine.

Chapter 17

“protect the confidentiality of the client’s identity in social conversations, all advertisements, and any and all other matters unless disclosure of identifiable information is requested by the client in writing, is medically necessary, or is required by law”

--NCBTMB Standards of Practice III (a)

“share pertinent information about the client with third parties when required by law.”

--NCBTMB Standards of Practice III (d)

“Sacrosanct” means “regarded as sacred and inviolable.”⁷⁹ That is pretty much the way this ethic feels about revealing a client’s identity.

There may be a natural temptation to brag about the celebrity that was in the shop. But this ethic urges caution in social conversation. The rules are apparently differently in restaurants—*Vanity Fair* magazine frequently runs articles about restaurant owners or major-domos who name drop shamelessly. Therapists come from tougher stuff.

The ethic requires protection of the client’s identity in “all other manners.” This suggests that any log or paperwork the client signs upon entering should be so located that other clients or other non-employees cannot see the information. Likewise, credit card paperwork should be in a private area and not allowed to lay about.

⁷⁹ Dictionary.com, *sacrosanct*, undated, <http://dictionary.reference.com/search?q=sacrosanct>.

Besides being unethical, using a client's name in advertising may make the therapist liable in a law suit alleging violation of the right to publicity.⁸⁰ **In your ads, you can mention the name of one of your celebrity clients if the celebrity gives you permission to do so.** Rap music duo OutKast recorded and distributed a song with the late Rosa Parks' name as the title.⁸¹ Ms. Parks, a civil rights icon for refusing to move to the back of the bus in 1955 Montgomery, Alabama, alleged this violated her right to publicity and, among other things, interfered with a business relationship (she had licensed the use of her name four years previously to other musicians).⁸² The United States Supreme Court ruled the law suit should be allowed to proceed.⁸³ In Idaho and Iowa, using a person's name without permission in an e-mail advertisement may be a crime.⁸⁴

There are exceptions to these Standards. The client can consent to use of name in writing.

The name of the client may be released if medically necessary. Typically in the United States a person has no duty to come to the rescue of someone in trouble, even if that rescue could be affected with no risk to the rescuer.⁸⁵ (Some jurisdictions may impose a duty to render aid.) The exception is if the would-be rescuer has somehow caused or contributed to the situation from

⁸⁰ Jeffrey A. Greenbaum, *Using Someone In Advertising ... Without Consent?*, February 2004, [http://www.shootonline.com/shootonline/thisweekonline/display\(online_columns\).jsp?vnu_content_id=2085233](http://www.shootonline.com/shootonline/thisweekonline/display(online_columns).jsp?vnu_content_id=2085233).

⁸¹ Jeffrey A. Greenbaum, *Using Someone In Advertising ... Without Consent?*, February 2004, [http://www.shootonline.com/shootonline/thisweekonline/display\(online_columns\).jsp?vnu_content_id=2085233](http://www.shootonline.com/shootonline/thisweekonline/display(online_columns).jsp?vnu_content_id=2085233).

⁸² Jeffrey A. Greenbaum, *Using Someone In Advertising ... Without Consent?*, February 2004, [http://www.shootonline.com/shootonline/thisweekonline/display\(online_columns\).jsp?vnu_content_id=2085233](http://www.shootonline.com/shootonline/thisweekonline/display(online_columns).jsp?vnu_content_id=2085233).

⁸³ Jeffrey A. Greenbaum, *Using Someone In Advertising ... Without Consent?*, February 2004, [http://www.shootonline.com/shootonline/thisweekonline/display\(online_columns\).jsp?vnu_content_id=2085233](http://www.shootonline.com/shootonline/thisweekonline/display(online_columns).jsp?vnu_content_id=2085233).

⁸⁴ EmailPilot, *Spam Laws*, 2003, <http://www.emailpilot.com/publicroot/main/spam/state-1.html>.

⁸⁵ Edward P. Richards III, *Medical and Public Health Law Site: Introduction*, undated, <http://biotech.law.lsu.edu/books/aspen/Aspen-INTRODUC-7.html>, Louisiana State University Law Center.

which the person needs to be rescued.⁸⁶

If a client is involved at the clinic with an injury or other medical situation, the therapist may answer questions from medical professionals about the client without violating this Standard.

The final exception is that the client's name must be revealed when required by law. Certain people in specified situations have a legal right not to disclose information. These include attorneys,⁸⁷ the President of the United States,⁸⁸ reporters,⁸⁹ doctors,⁹⁰ spouses,⁹¹ priests,⁹² and defendants avoiding self-incrimination.⁹³ This legal right is called a privilege. Massage therapists are not on the list and must therefore reveal any information they have when legally required to do so.

Chapter Summary

- The ethic requires protection of the client's identity unless an authorized exception applies.
- Using a client's name in advertising may make the therapist liable in a law suit alleging violation of the right to publicity.

⁸⁶ Edward P. Richards III, *Medical and Public Health Law Site: Introduction*, undated, <http://biotech.law.lsu.edu/books/aspen/Aspen-INTRODUC-7.html>, Louisiana State University Law Center.

⁸⁷ Lectric Law Library, *Work Product Privilege*, undated, <http://www.lectlaw.com/def2/w031.htm>.

⁸⁸ Associated Press, *Executive Privilege is Murky Legal Doctrine*, February 1998, <http://www.freerepublic.com/forum/a99865.htm>.

⁸⁹ Student Press Law Center, *Legal Analysis: Confidential*, 2003, <http://www.splc.org/legalresearch.asp?id=63>.

⁹⁰ Abelson Law Firm, *Physician-Patient Privilege*, undated, <http://www.abelsonlaw.com/3glossarypatntphysprivl.html>.

⁹¹ Legal Definitions.com, *Husband and Wife Privilege Definition*, undated, <http://www.legal-definitions.com/G/husband-and-wife-privilege.htm>.

⁹² FindLaw for Legal Professionals, *privilege*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=c4/c47651d433d1f080685d896614bfb939>.

⁹³ FindLaw for Legal Professionals, *privilege*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=c4/c47651d433d1f080685d896614bfb939>.

Chapter 18

“protect the interests of clients who are minors or who are unable to give voluntary consent by securing permission from an appropriate third party or guardian.”

--NCBTMB Standards of Practice III (b)

Some children may not have the communication skills of adults. They may not know it's OK to speak up if the treatment is uncomfortable or hurting them.⁹⁴ The therapist should take extra time to explain to the child about the treatment and to solicit feedback as the session is in progress.

In this day where child abuse has become a much talked about subject, many children have been warned to avoid inappropriate touching. The child may need to be educated that massage is *appropriate* touching and that no personal areas will be touched. The child should also be told that if at any time the child feels uncomfortable to let the therapist know immediately. Therapist should get permission from the child before treatment of each part and stay acutely aware to any subtle signs of child's possible discomfort.

The attitude of the parent or guardian and of therapist goes a long way to making the child at ease. It is advisable for the therapist to always have the parent or guardian to be present in the room at all times.⁹⁵ One office puts the massage on hold if the parent leaves the room.⁹⁶ If that is not possible, it is advisable that

⁹⁴ Maestra, *Neck Massage and Children*, March 2003, http://www.massageresource.com/ubbcbgi/ultimatebb.cgi?ubb=get_topic&f=1&t=000935, The Massage and Bodywork Resource Center.

⁹⁵ Cascade Medical Massage, *About Massage Information Sheet*, undated, www.cascademassage.com/cmminfo.pdf.

⁹⁶ Cascade Medical Massage, *Office Information*, October 2004, <http://www.cascademassage.com/page200.htm>.

the parent or guardian be able to see the child at all times, which may be accomplished by leaving the therapy room door open, for example. In any case, whether or not the parent or guardian witnesses the massage, the Standard requires the parent's or guardian's consent for the massage.

The above "consent" by the child is for psychological reasons and out of caring. The child cannot legally consent until the legal age of majority, usually eighteen.⁹⁷ The fact that a child may look over eighteen is of no consequence—the chronological age is what legally matters.⁹⁸ The therapist has no way of knowing whether the adult presenting the child is in fact the parent or legal guardian capable of authorizing treatment. Nonetheless, if the therapist has any hint that this is not the case; the therapist may wish to decline the massage.

Practically, a minor can make a contract but the minor's age is a reason to void the contract.⁹⁹ The minor—but not the other party—may repudiate the contract.¹⁰⁰ The minor when repudiating the contract must return anything possible received from the other party.¹⁰¹ In a massage, there will be nothing left to return. If a minor bought a car for cash from an adult, destroyed the car, and repudiated the contract, the minor would owe nothing to the seller and would be entitled to the return of the money paid.¹⁰² (Oddly a minor cannot repudiate an auto *insurance* contract.)¹⁰³ Put another way, the minor could purchase a massage from an adult therapist, receive the massage, afterwards repudiate the contract, and be entitled to the return of the money paid. This is another reason for

⁹⁷ Findlaw for Professionals, *age of majority*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=20/2004043af48a2c6c1b455a68d5ec76fc>.

⁹⁸ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

⁹⁹ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰⁰ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰¹ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰² Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰³ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

the therapist to deal with the parent or guardian.

If a minor bought a massage that was medically necessary, a court might envision a “quasi-contract” and require the minor to pay despite the previous discussion.¹⁰⁴

An intoxicated person can void the contract if the other party knew of the intoxication and contracted anyway.¹⁰⁵ Upon regaining sobriety, the person may repudiate the contract, return anything received and get their money refunded.¹⁰⁶ In a therapist’s case, since massage is not a returnable item, this would equal giving a free massage.

Chapter Summary

- The therapist should take extra time to explain to the child about the treatment and to solicit feedback as the massage is happening.
- A parent or guardian must consent to the massage of a child.

¹⁰⁴ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰⁵ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

¹⁰⁶ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

Chapter 19

“solicit only information that is relevant to the professional client/therapist relationship.”

--NCBTMB Standards of Practice III c

The client health questionnaire should contain relevant information such as areas of pain.

There is a therapist whose four page intake form is available on the web. The questions include marital status, number of children, interests and hobbies. It is hard to see how these are relevant to the professional client/therapist relationship.

Another application also wants to know the ages of the children, the employer's name and address, the client's Social Security number and the client's driver's license number. The form also asks for the client's sex; it seems rather an unnecessary question under the circumstances.

A third form wants the spouse's name, employer, address and phone of employer.

Is any of this information necessary to give a good treatment? It is unlikely, and may be just an aid for pretending to remember things about the client. On the other hand, it could be that these therapists are using forms that were meant for another type of business and do not make sense in a massage setting.

A more common question asks for the client's home and business phones and e-mail address. In view of this ethic, it may be hard to justify acquiring even this information unless the client has paid by check, insurance is being billed or the data is required by

local statute governing massage

What information is relevant to the professional client/therapist relationship? A (possibly detailed) questionnaire to see if the client admits to any of massage's contraindications¹⁰⁷ is relevant and probably ethically required. Massage in a medical setting under another professional's supervision may, of course, require more rigorous documentation.

There are practical reasons for maintaining the least records necessary on clients. Records must be kept for at least 4 years. The more information kept, the larger the area and resources required for storage. If there is ever a breach in the therapist's system and the records become public, the more information the therapist has, the bigger damage the client may suffer.

Conversation in the therapy room is the subject of diverse opinions. Some therapists feel that the client should set the tone for how much conversation occurs, after the talking over of consent issues occurs.¹⁰⁸ Others (probably the majority) believe that too much conversation detracts from the relaxing purpose of the massage.¹⁰⁹ One clinic is more forceful—they ask that conversation be confined to feedback about the massage.¹¹⁰ Another agrees that conversation should be related to the massage and adds that talking should be done in a whisper.¹¹¹ One therapist even asks the client on the intake form whether conversation is preferred or not.¹¹²

¹⁰⁷ See chapter 5

¹⁰⁸ Bob, *Massage Tips and Ideas*, 2004, <http://massage.blogspot.com/>; Blue Sky Massage Therapy, *What to Expect*, undated, <http://www.blueskymassagetherapy.com/page3.html>. Web site down.

¹⁰⁹ <http://www.acaofcapecod.com/receive.htm>. Web site down; Susan and David Luce, *How to Get the Most from Your Massage*, undated, <http://www.alaskawellness.com/archives/05-00massage.htm>.

¹¹⁰ www.cascademassage.com/procs03.pdf. Web site down.

¹¹¹ 4 My Massage, *How to Receive a Massage*, undated, <http://www.4mymassage.com/howtoreceiveamassage.htm>.

¹¹² Tampa-Massage.com, *Intake Form*, undated, <http://www.slapmyrhino.com/intake.html.sssssss>

One massage school advocates chatting the client in “permission marketing” to obtain consent to add them to a mailing list.¹¹³ This may be a dubious practice, given this ethic.

So is it OK under this ethic to ask a stock broker client about market tips? Absent a ruling from the Board, the therapist will have to decide whether this is soliciting information or just general conversation to make the client feel comfortable. Probably such questions are best avoided.

Chapter Summary

- A (possibly detailed) questionnaire to see if the client admits to any of massage’s contraindications is relevant and probably ethically required.
- Maintain the least records necessary on clients.
- Too much conversation may detract from the relaxing purpose of the massage.

¹¹³ Business and Marketing On-line Resource Center, *Permission Marketing: “The New Revolution in Marketing,”* 1999, http://www.bodywisdomschool.com/m_permission_marketing.htm.

Chapter 20

“maintain the client files for a minimum period of four years .”

--NCBTMB Standards of Practice III (e)

“store and dispose of client files in a secure manner.”

--NCBTMB Standards of Practice III (f)

Although the NCBTMB Code of Ethics and Standards of Practice require records be kept, they do not specify what records are to be kept (though see chapter 19 for the ethic “... solicit only information that is relevant to the professional client/therapist relationship.”) except that consent must be recorded.

The jurisdiction licensing a therapist will probably have requirements for records. The New York therapist must note the client’s name and date of treatment if the massage is given in “a health spa, resort or similar setting.”¹¹⁴ In the state of New York, therapists are required to keep “a record of client evaluations and treatments for six years or until the client turns 22, whichever is longer,”¹¹⁵ potentially longer than the Standards of Practice requires. New York has a rule that the client has a right to get a copy of his records.¹¹⁶ The “Massage Therapy Practice Act Rules” in Utah, on the other hand, requires no records (interestingly, Utah has a “Standards for Animal Massage Training”).¹¹⁷

¹¹⁴ Office of the Professions, *Massage Therapy*, undated, <http://www.op.nysed.gov/massb.htm>, New York State Education Department.

¹¹⁵ Office of the Professions, *Massage Therapy*, undated, <http://www.op.nysed.gov/massb.htm>, New York State Education Department.

¹¹⁶ Office of the Professions, *Massage Therapy*, undated, <http://www.op.nysed.gov/massb.htm>, New York State Education Department.

¹¹⁷ http://www.dopl.utah.gov/licensing/statutes_and_rules/R156-47b.do, Web site down.

If files are on paper, they should be stored in a locked file cabinet. Fire extinguishers are probably required by local ordinance but a burglar alarm system for the office enhances the security of the files. If files are taken out for review, they should never be left in an area accessible to the public.

If files are kept on computer, they should be backed up regularly onto a media (such as flash drive) that is removable from the computer to avoid loss. The computer should be running an anti-virus program and a firewall program to avoid loss and unauthorized entry. Both these have versions available which can be constantly updated on the web. If the computer is running the Windows operating system, it should have the latest Microsoft updates. These will contain patches for problems. It is possible to sign up for Microsoft to automatically send these updates at no cost (see “Windows Update” on the Start Menu.)

Destruction of client records should be accomplished with a shredder that cross-cuts. This will provide a much smaller end result than a straight-cut shredder, providing better security. A cross-cut shredder can be purchased for approximately \$60 though, incredibly, it is possible to spend almost \$1,900.00 on one.¹¹⁸ Although probably more than most practices need, there are firms who will shred material you deliver to them¹¹⁹ and another that will bring a truck to the therapist and shred on-site.¹²⁰ Failure to properly dispose of client records not only violates NCBTMB standard of practice but if a snooper can salvage client information, they may use it in such a way that leads back to the

¹¹⁸ Staples, *shredder*, 2004,

http://www.staples.com/catalog/search/Search_Sum.asp?PageType=2&SearchPageType=2&Keywords=shredder&IpSessionId=383543319921&IpClassId=142282&IpClassCount=22&Brand=All+Brands&PriceRange=All+Price+Ranges&x=18&y=9.

¹¹⁹ AAA Shredding, *AAA Shredding*, 2004,

<http://www.aaashredding.com/?OVRAW=%22document%20destruction%22&OVKEY=document%20destruction&OVMTTC=standard>.

¹²⁰ California Document Shredding, *California Document Shredding*, 2004,

<http://www.caldocushred.com/?OVRAW=%22document%20destruction%22&OVKEY=document%20destruction&OVMTTC=standard>.

therapist, destroying therapist creditability and creating a nasty hole in the client base. Legal problems could also arise; the therapist may be sued by the client. If the licensing jurisdiction has a destruction of records requirement, violation may weaken the therapist's hold on licensing.

Chapter Summary

- The jurisdiction licensing a therapist will probably have requirements for records which may be different (longer or shorter) than the NCBTMB's requirement to keep them for 4 years.
- Secure records include locked file cabinets, fire extinguishers, burglar alarms, computer back ups and up to date anti-virus programs.
- Destruction of client records should be accomplished with a shredder that cross-cuts.

Chapter 21

“provide a physical setting that is safe and meets all applicable legal requirements for health and safety. .”

--NCBTMB Standards of Practice IV (a)

The licensing jurisdiction will probably have health requirements. They may require hot water or separate sinks for employees. There may be requirements for wheelchair turnaround space. If showers are offered, handicapped accommodations may be necessary. Are the tables at the right height? Can a handicapped person safely get onto the table? Is there a fire exit? Is it kept unlocked? The jurisdiction will probably require soap dispensers rather than bar soap so that germs are not transferred between clients. (Special anti-viral soaps are available and may be required by ordinance.) The same concern applies to applicator bottles.

Avoiding cross-contamination cannot be stressed enough. The exterior of the bottle containing lotion or oil should be cleaned with a germicide after each use. When using a cream, it should be applied with a disposable applicator or an applicator which can be cleaned with a germicide after each use. The table should be covered with vinyl or other material capable of being sanitized between clients or a barrier of paper protection used for each client. Many therapists like to use a sheepskin or other padding covered by a sheet. While this is great, the sheet is not a germ barrier. Either the sheepskin must be washed between clients or an appropriate germ barrier (a sheet of medical paper or plastic) used between the client's sheet and the sheepskin. A better barrier than a sheet may be required by ordinance. Anything used for one client should be removed before the next client is allowed into the treatment room or area.

The licensing jurisdiction will probably require dirty linen be washed in water hot enough to kill germs. The county health department may have jurisdiction for this area as well. Even if a linen service is used, the clinic will have to have hot water for washing hands. Soiled linen should be in an enclosed, separate area. Clean linen should be stored in an enclosed cabinet or closet.

If you are providing drinking water or beverages, be certain it is in a disposable cup or individual unopened originally packaged container. Snacks should be individually wrapped to prevent cross contamination.

You should not work if ill. You may be contagious and transferred to the client, reducing chances the client will return. As we know, Repeat and referral business is, under most circumstances, the key to success in the massage and bodywork business. It is often difficult to hide the fact one is sick. At best, it is unattractive for the client to be worked on by a therapist who is coughing. It is not worth losing clients by practicing when ill. Clients who are ill should be invited to return when they are feeling better.

When opening a clinic, neighboring businesses should be examined. If the location is next to a factory, the air may be unhealthy. Noise pollution may also be a concern, as this can trigger migraine and other illnesses. Do not open next to a dog groomer, for example; the barking is not conducive to a peaceful setting. Check the area when local business are open and again in the evening so the worst case scenario is known. The area should be safe. Adequate evening lighting should be present. Walking paths ought to be in good repair.

Chapter Summary

- The licensing jurisdiction will probably have health

requirements.

- Avoid cross-contamination.
- The therapist should not work if ill.

Chapter 22

“maintain adequate and customary liability insurance .”

--NCBTMB Standards of Practice IV (b)

Insurance has a long history. The Greeks and Phoenicians were gathering together to insure against calamity and loss in 500 BC.¹²¹ The first insurance contract was a maritime one issued in Genoa, Italy in 1347.¹²² Loss against fire was not insured against until 1710 in England, after London lost 13,200 houses due to fire.¹²³ The insurance tradition continues today in the massage industry. Therapists’ interests are just as great to them as someone who owns a shipping company. The therapist has invested a certain amount of irretrievable time and hard earned money into a profession where future earnings are anticipated. Without insurance, that is in jeopardy.

Certain industry associations offer insurance. Many jurisdictions and landlords may require insurance. Doctors who refer patients may require the therapist to have insurance.¹²⁴ Typically, massage/bodywork insurance follows the therapist so that if a massage is done off site, the therapist is still covered.

The main thing is to shop around. Prices vary enormously. The terms of the policies do not differ significantly. Look for an insurer that specializes in the massage industry rather than general business coverage; prices may be better. The coverage should be high enough for the medical expenses in your area. A condition of therapist licensing may dictate an amount. Make sure the policy

¹²¹ http://www.cgtcollege.org/msd169/history_of_insurance.htm#Mesopotamia. Web page down.

¹²² http://www.cgtcollege.org/msd169/history_of_insurance.htm#Mesopotamia. Web page down.

¹²³ http://www.cgtcollege.org/msd169/history_of_insurance.htm#Mesopotamia. Web page down.

¹²⁴ Massage Insurance Billing, *Want to Add Insurance Billing to Your Practice?*, undated, <http://www.massageinsurancebilling.com/>.

covers not only actions of the therapist but also accidents which happen on the premises. The client is more likely to have an accident on the premises than get hurt on the table. Many accidents occur in the bathroom where the floor can be wet and slippery. Rubber mats should be used and the area should be checked frequently.

Some things may not be covered by insurance. Work with T-bars and communicable disease may be excluded.¹²⁵

The down side to not having insurance is that the therapist must personally pay for damages.¹²⁶ Even the therapist's future earnings may be garnished.¹²⁷

The client questionnaire is very important. If the client has a preexisting issue, the therapist has a record of it and can work around it or refer the client to a more appropriate professional. The treatment should be tailored to the client. If the client has a neck injury, care will need to be taken and possibly, depending on the extent of the damage, a referral from a medical doctor or chiropractor is in order. Massaging pregnant women requires special training; one of the dangers is that improper massage can induce labor if done in the later trimesters. The therapist might want to talk to the doctor of clients with diabetes, for example, to see if there are issues to massaging safely. The insurance provider presumes the therapist is taking proper care and is appropriately trained for the services being performed. The client trusts that the therapist (especially one who is nationally certified) takes all the steps necessary to protect her/ his wellbeing.

¹²⁵ Alternative Balance, *Insurance*, 1998-2004, <http://www.alternativebalance.net/content.php?cid=1036>.

¹²⁶ Massage Magazine, *Hands-On Trade Protection Plan*, 2004, <http://www.massagemag.com/insurance.htm>.

¹²⁷ Alternative Balance, *Insurance*, 1998-2004, <http://www.alternativebalance.net/content.php?cid=1036>.

Chapter Summary

- Many jurisdictions and landlords may require insurance.
- The insurance provider presumes the therapist is taking proper care and is appropriately trained for the services being performed.

Chapter 23

“maintain adequate progress notes for each client session, if applicable .”

--NCBTMB Standards of Practice IV ©

Record keeping is particularly applicable when working for or with another professional. The other person will want to see what progress is being made and may need the documentation for insurance or tracking the status of the client. Massage/ bodywork may be part of a larger plan of care embodying other disciplines and other providers.¹²⁸ Proper record keeping prevents any confusion or embarrassing moments where competency might be questioned.

The licensing jurisdiction usually requires some form of records be kept. The information most commonly needed is whether the client has any condition which may be contraindicative in massage. The therapist may wish to limit information collected to that and what is required by ethics and licensing jurisdictions; the exception being where more information is required because another discipline, such as chiropractic, is also involved.

The nationally certified therapist is required to obtain consent for treatment and retain records.

A progress report may not be applicable when the massage is recreational and not meant for therapy.

¹²⁸ Cincinnati Children’s Hospital Medical Center, *Massage Therapy*, 1999-2004, <http://www.cincinnatichildrens.org/svc/prog/hospice/svc/massage.htm?view=content>; The Center for Health and Healing, *What We Do*, undated, <http://www.humed.com/healing/what.shtml>, Hackensack University Medical Center.

Chapter Summary

- Proper recordkeeping prevents any confusion where competency might be questioned.
- A progress report may not be applicable when the massage is recreational and not meant for therapy.
- The NCBTMB requires that the client's consent be recorded.

Chapter 24

“accurately and truthfully inform the public of services provided .”

--NCBTMB Standards of Practice IV (d)

The American Massage Therapy Association says 60 percent of consumers seek massage for health and medical reasons while only six percent for “sheer indulgence.”¹²⁹

During a discussion with an acupuncturist concerning advertising, the author mentioned there was a bulletin board at a local new age shop where the acupuncturist could post business cards. “We tried that.” He said, “The clients we got from there practically wanted us to levitate them. They don’t know anything about acupuncture.” While, this author has never had a client who wanted to be levitated, she certainly has met a few whose expectations were beyond range.

Advertisements can be deceiving. A strongly generating ad can be done professionally and without disguise. If pictures are used, they should be congruent with services offered and not be misleading. Careful thought should be given that pictures and ad copy cannot be sexually misconstrued. Language suggesting medical treatment when no staff member is qualified to offer such treatment is misleading and inappropriate. When the therapist’s training is included in ads, it saves misunderstandings. This succinctness also draws quality clientele who might have otherwise dismissed the ad. Clients drawn in by false appeals are unlikely to return.

¹²⁹ Diane Richard, *A Friend in Knead*, 2002, http://www.crosscountryskier.com/balanced_life_jan_feb_2002.html, *Cross Country Skier*.

It is advised the therapist does a brief consultation on client's first visit to discuss client's expectations. Or simply make sure the client questionnaire covers this. Material can also be made available explaining who the therapist is, their training, qualifications, and what the client can expect during and as a result of treatment. This information also makes a nice couple of pages on the clinic's web site.

The administration of certain techniques or procedures may be outside the scope of practice of massage. One might be available to provide such in addition to the massage therapy (assuming all other licensing requirements were met) but the Code of Ethics suggests the client should be informed the procedure is outside that of the massage certification. If the client is relying on the certification as a guarantee of expertise, the therapist should be careful that the "color of authority" of certification does not embrace other practices. It cannot be stressed enough, targeting through advertising people whose expectations differ from what is actually being offered detracts from repeat business and misses the target client.

Chapter Summary

- In advertisements, language suggesting medical treatment when no staff member is qualified to offer such a procedure is misleading and inappropriate.
- Targeting people in advertising whose expectations differ from what is actually being offered detracts from repeat business and misses the target client.

Chapter 25

“honestly represent all professional qualifications and affiliations .”

--NCBTMB Standards of Practice IV (e)

On rare occasions, a client may believe a therapist has qualifications which in reality are not within massage and bodywork scope of practice, or affiliations which are non-existent. It is incumbent upon the therapist to make sure that the client does not have any misconceptions about the therapist’s abilities, qualifications or affiliations.

It is not uncommon for certain members of the public to overestimate the massage and bodywork industry. For example, some people equate the massage therapist with a physical therapist. This would not be correct as the educational requirements are vastly different. If the therapist works in an office with doctors or other types of therapists, the client may assume a co-mingling of qualifications or expertise. It would be easy and maybe even flattering to assume the role and not correct the client. This would be dishonest and could lead to serious problems down the road, especially if the therapist does any action pursuant to the client’s belief. **The therapist should clarify professional limitations while practicing only within those limits.** The quality of a therapist’s work is what attracts and keeps business.

Some therapists try to hype their image with questionable medical degrees. It is unlikely that a medical doctor with 12 years of professional education and internship will ever practice any type of massage or bodywork. It may impress some clients to be treated by a therapist with a doctorate but ultimately it is ridiculous.

Furthermore, the client is going to walk in expecting to see the verifying diploma hanging on the wall.

The therapist's certificate tells the client that the provider knows details about the human body and will not cause an injury; that the therapist has been approved to perform certain treatments. However, this expertise, valuable as it is, should not be mistaken for abilities in other, unlicensed fields. For example, the therapist should not wander into the practice of chiropractic or colonic therapy (unless separately licensed or certified for those fields).

If the therapist thinks membership in an organization would look good, their efforts to actually join the affiliation may be further rewarded as many organizations offer one or more of these: client referral, employer referral, insurances, and industry updates.

No matter how much training, certifications or affiliations therapists have, they cannot walk on water. (Be reasonable. Be objective. Be realistic.) When the therapist delivers precisely what is promised, no one is surprised or disappointed. The therapist can then feel satisfaction in what has actually been accomplished in her/his career. Being very clear and concise about what is offered promotes reputation.

There are many who are looking for exactly the treatment the therapist is comfortable in doing. Advertising a specialty in back pain when one really offers a more spiritual massage is counterproductive. The author went to a therapist who gave a good massage but then began to pray over her so that the session became much more prayer than massage. The therapist should have mentioned this feature in the ad so the author knew what she was getting for her money.

Anyone who has worked for years in this industry will say that word of mouth is the best advertisement. It's free. All the

therapist need do is perform the treatment they way they want to perform it, get good at it, be sincere, thoughtful, and free of deception and referrals will flock to them.

Chapter Summary

- The therapist should clarify the limits of the therapist's profession and practice only within those limits.
- It is the therapist's responsibility to make sure the client does not have any misconceptions about the abilities and qualifications of the therapist.

Chapter 26

“promote his/her business with integrity and avoid potential and actual conflicts of interest .”

--NCBTMB Standards of Practice IV (f)

The old saying “You never get a second chance to make a first impression,” is certainly true when it comes to the massage and body work industry. You must establish trust with the client from the beginning if the session is to go well and the client to make a return visit. If a client does not feel both secure and wanted, as the reader already knows, the client will “fight” the treatment, making it less effective and unpleasant for the therapist, who now has to massage a “board.”

So what should the therapist be aware of when setting up the experience? To begin with: an insincere therapist is fooling no one. The therapist will inevitably betray their true feelings in the subtle slipping of tone, gesture and body language. A conflicting facial expression of greed, impatience, boredom or phoniness can escape in a moment; with lightning speed, the therapist reels it back in---- too late. In the concentrated environment of the treatment room, there are no distractions. For as long as the session takes, there is the intimacy of awareness where insincerity is found out.

When the therapist gives into sincerity, barriers are down, the treatment is less work, time goes by faster and both client and therapist have a relaxing session. This carefree atmosphere would be unattainable if the therapist were engaged in any commercial shortcuts.

Advertise what is actually being offered. Do not imply or advertise that which is not. Attaching conditions later to offers

being made now (for example, offering a free half hour introductory massage when it is really 20 minutes of hot packs, 5 minutes of massage and 5 minutes of waiting on the table) is dishonest. Some client may not say anything but they still know it is a scam, find it offensive, and not return.

Even the name of the business can help or hurt promotion. One beauty parlor is called the Salon Medusa. Medusa was a monster so frightening that a single glance at her turned a person into stone. This doesn't sound like a good name for a beauty salon! On the other hand, the name could be meaningless—the Bodyzone. Cute, but does it do anything for the customer? Feel Good Therapy or Warm Hands Clinic—these paint a picture in the client's mind and actively promote the business (starts selling) before the client even calls or sees the therapist.

If the client asks the therapist's credentials, they should be given correctly without deceit. Do not try to hype the impression given to the client. Avoid gimmicks or ploys. Post prices plainly in sight. Either it's tangible or it's not.

Schemes in today's commercial world are common. For example, a free credit report advertised on the net has resulted in one person's six month fight to get a \$69 credit service off their bill. A computer center with an unprinted warranty may say only the hardware is protected—and every problem is caused by bugs in software. The therapist need not participate in that behavior. The massage and body worker should not live in that world.

Some clients may become addicted to massage. If the therapist notices a frequent customer enduring financial strain, the therapist should wean the client. The therapist can say “Let me make you an appointment for---“ on some date farther away than the client's normal return date.

The selling of other products should be reviewed. Products being sold need to be appropriate to the client. The possibility the client may be interested simply in massage or other bodywork and no other commerce must have consideration. The Alberta Registered Massage Therapists Society has a proposed ethic which would seem to suggest the sale of products is unethical: “refrain from using ... professional credentials to promote or discuss commercial products or services.”¹³⁰

While the selling of other products may be desirable for added income, care should be taken not to push the product, making the client feel obligated to buy. If products are nicely displayed, along with information pamphlets and prices clearly visible, that should be enough. Pushing a product makes the client feel obligated and maybe even resentful. It looks bad for the profession, as well. Avoid carrying useless “snake oil” products and products that clearly belong to another venue.

Discussing client’s personal affairs with others is gossiping. It is necessary to treat personal information received from a client as confidential (see chapter 17). It is best not to participate and lead the conversation elsewhere, preferably into silence. One does not have to woo the client with conversation; good hands and a good treatment are all that is necessary.

In the relative intimacy of the therapist-client relationship, some clients may begin to feel an attraction for the therapist. While it is apparently possible to date a client, it is clear from the Standards of Practice (NCBTMB Standards of Practice V (d)) that in order to engage in a sexual relationship with a client, the therapist must cease to see the client professionally and thereafter wait six months.

¹³⁰ Steering Committee, *The Proposed Code of Ethics*, August 2003, http://www.armts.com/documents/The_Proposed_Code_of_Ethics.pdf, Alberta Registered Massage Therapists Society.

The Alberta Registered Massage Therapists Society had proposed ethics saying it was a conflict of interest for a massage therapist to use “position, authority or privileged information to Obtain an improper benefit personally, directly or indirectly, or Obtain an improper benefit for a friend, relative or associate.”¹³¹ Certainly coercing a benefit from a client by revealing the status of client or other confidential information is a conflict of interest.¹³²

In any industry, there are connections being made. The massage and body work industry is no different except it is inappropriate for therapists to discuss their personal problems with a client or to ask or hint for favors.

Chapter Summary

- Establishing trust with the client from the beginning is paramount if the session is to go well and the client to make a return visit.
- Do not imply or advertise that which is not being offered.
- The possibility the client may be interested simply in massage and no other commerce should be considered.

¹³¹ Steering Committee, *The Proposed Code of Ethics*, August 2003, http://www.armts.com/documents/The_Proposed_Code_of_Ethics.pdf, Alberta Registered Massage Therapists Society.

¹³² Lawyers have a similar ethical prohibition: “A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by rule 4-1.6.” Abel Legal Forms, *Rule 4-1.8 Conflict of Interest; Prohibited Transactions*, undated, <http://www.ablelegalforms.com/flalawyerethics418.html>.

Chapter 27

“advertise in a manner that is honest, dignified and representative of services that can be delivered and remains consistent with the NCBTMB Code of Ethics .”

--NCBTMB Standards of Practice IV (g)

“ ...advertise in a manner that is not misleading to the public by, among other things, the use of sensational, sexual or provocative language and/or pictures to promote business.

--NCMBTMB Standards of Practice IV (h)

Luigi Pirandello (1867-1936) said it best when he said, “I present myself to you in a form suitable to the relationship I wish to achieve with you.” It was not so long ago that in some circles in the U.S the word *massage* had a sexual connotation. If a person said they were a masseuse, eyebrows would raise. In fact, the title “massage therapist” became popular because rewording helped the public make a transition in their thinking. Now they are massaging in beauty salons, on the beaches, in airports, and everyone wants one. But how did that come about?

It was the determination of forbearer therapists to educate the public about the true nature of the industry which brought it to the mainstream. It would be a grave injustice to all those people who paved the way if their descendants got sloppy now.

Aside from referrals, an advertisement is usually the first contact with a client and the only one with the general non-client public. Therapists who fail to set a good example injure their own profession. This may come back to haunt them later.

A way to begin is checking the company one's ad is keeping. There may be publications with wide circulation but containing advertisements which are undignified, suggesting activities which are inappropriate. These magazines or newspapers should be avoided. The advertisement should exude professionalism so it cannot be misconstrued by the reader. The ad must demonstrate a difference between it and the undesirable companions. The Yellow Pages may lump massage therapists with escort services. Since the therapist's business may depend on the Yellow Pages, there is no choice. But the therapist may want to join with other industry professionals and suggest to the directory company that separate categories be established. (This may also be an appropriate endeavor for massage organizations.) Likewise, the therapist ought not to advertise in a medical journal if the massage is not primarily medical.

Advertise only what is being offered. Because advertisements can be deceiving, the picture and services being offered should be consistent and not misleading or capable of being misunderstood. Care should be taken that the pictures and ad copy cannot be sexually misconstrued. The advertising language should not suggest treatment the therapist or therapist's affiliates are not qualified to offer. Succinctness is desirable; saying exactly the therapist's qualifications prevents error. The purpose of the advertisement is to generate business; this should be done professionally and without disguise. Clients drawn in expecting something from advertising which is not actually being offered are unlikely to return and if they stay the first time, they may become a headache.

Successful professionals do not advertise what is not being offered or which is available only with a hitch. If a free half hour massage is advertised, it should be really free and not contingent, when the client calls or arrives, on the purchase of a package or other such ruse.

Chapter Summary

- The advertisement should exude professionalism so it cannot be misconstrued by the reader.
- Clients drawn in expecting something from advertising which is not actually being offered are unlikely to return.

Chapter 28

“comply with all laws regarding sexual harassment.”

--NCBTMB Standards of Practice IV (i)

Sexual harassment is often viewed in an employer/employee context. Two ways for the employer to get into trouble is to allow a “hostile environment” or for “quid pro quo” sexual harassment to exist. The first kind of harassment occurs when the behavior unreasonably interferes with an employee’s work performance or when the behavior negatively affects an employee’s psychological well being because the environment is intimidating, hostile or offensive.¹³³ The second type of harassment is more blatant. Here job benefits, continuation in the job or other employment decisions are based on the satisfaction of sexual demands.¹³⁴ In either case, the employer is ultimately liable for what happens on the job.¹³⁵

The federal statute applies to employers with 15 or more employees; state law may differ.¹³⁶ Links to the state laws are available at <http://www.de.psu.edu/harassment/legal/state.html>.

A hostile environment can occur when repeated language or writing is obscene or lewd (including whistling or leers), when continued sexual or romantic advances are unwelcome, when pornographic or sexual material is displayed, or when persistent

¹³³ Findlaw for Legal Professional, *hostile workplace sexual harassment*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=8d/8df28480586f125ddca105f86cd42563#hostile+environment+sexual+harassment>.

¹³⁴ Findlaw for Legal Professional, *quid pro quo sexual harassment*, 1994-2004, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=d6/d6c0e8c91050cdf0e155e679b0781dff>.

¹³⁵ Rawles, O’Byrne, Stanko & Kepley, PC, *U.S. Supreme Court Clarifies Federal Sexual Harassment Law*, undated, <http://www.rosklaw.com/harass.html>.

¹³⁶ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

undesired touching occurs.¹³⁷ For example, a female pilot for Continental Airlines complained several times to management about pornography male pilots left in the cockpit.¹³⁸ The company did nothing.¹³⁹ The jury awarded the female pilot \$875,000.¹⁴⁰

This atmosphere can even be created by independent contractors or vendors.¹⁴¹ It is possible that a therapist who was repeatedly propositioned by a client, who complained to management about the client, and whose protests were ignored, could sue the employer for sexual harassment.

Quid pro quo harassment (job benefits conditioned on complying with sexual demands) is generally done by someone in authority, a supervisor or manager.¹⁴² If the employee agrees to the act, the coerced consent may not relieve the employer of liability.¹⁴³ The harassment can be implied—a discussion of workplace issues followed by an improper request was held to be quid pro quo harassment.¹⁴⁴ The harassment need not come before the request. An employee spurned a request and was later discharged for calling in sick; this was held to be harassment.¹⁴⁵ No negative job consequence, such as being demoted or fired, is required for the employee to bring an action—simply the act of being asked and having refused is sufficient.¹⁴⁶

¹³⁷ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

¹³⁸ Anonymous, *Harassment/Hostile Work Environment Verdicts*, undated, <http://hr.dop.wa.gov/helpacademy/resource/sh12.htm>.

¹³⁹ Anonymous, *Harassment/Hostile Work Environment Verdicts*, undated, <http://hr.dop.wa.gov/helpacademy/resource/sh12.htm>.

¹⁴⁰ Anonymous, *Harassment/Hostile Work Environment Verdicts*, undated, <http://hr.dop.wa.gov/helpacademy/resource/sh12.htm>.

¹⁴¹ Nancy Wyatt, *Information on Sexual Harassment*, 2000, <http://www.de.psu.edu/harassment/legal/state.html>.

¹⁴² Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

¹⁴³ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

¹⁴⁴ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

¹⁴⁵ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

¹⁴⁶ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

Employees who are not the direct victims of sexual harassment can still bring a sexual harassment claim when they are passed over for benefits because less qualified employees submitted to either kind of sexual harassment.¹⁴⁷

The U.S. Supreme Court has given employers a course of action. If the employer has a sexual harassment policy which prevents and corrects these problems and the victim-employee fails to use the channel(s) provided by that policy, the employer is protected.¹⁴⁸ Every employer, therefore, should take the hint and draft a written policy. See <http://www.rosklaw.com/harass.html> for eight points to consider.

Chapter Summary

- Two ways for the employer to get into trouble is to allow a “hostile environment” or for “quid pro quo” sexual harassment to exist.
- If the employer has a sexual harassment policy which prevents and corrects these problems and the victim-employee fails to use the channel(s) provided by that policy, the employer is protected.

¹⁴⁷ Nancy Wyatt, *Information on Sexual Harassment*, 2000, <http://www.de.psu.edu/harassment/legal/state.html>.

¹⁴⁸ <http://www.rosklaw.com/harass.html>. Web site down.

Chapter 29

“not exploit the trust and dependency of others, including clients and employees/co-workers .”

--NCBTMB Standards of Practice IV (j)

Clients usually have reasonable expectations. Certainly they are not there for the sole purpose of giving away money. They are thinking about themselves: their comfort, their health, their need to relax. Some think the therapist is there for that purpose foremost. That is what is on their mind. Massage and bodywork, by nature, is a caring profession. The client naturally anticipates the therapist has their best interests at heart. **Having the client on the table and trying to up-sell them a product may be exploiting this trust unless the therapist can clearly identify that the client would benefit.** In this situation, the therapist should strive not to make the client uncomfortable. The therapist might suggest the client consider the proposed product or service “next time.” The fact that the suggestion is completely optional should be stressed. The client is probably present for many reasons, but none of which is to perform as a sales prospect.

The therapist has agreements, whether written or implied, with co-workers as well as clients and the same care applies. Gossiping, repeating something told in confidence or disparaging of co-workers undermines the atmosphere of the workplace, causing tension, cattiness and hurt feelings. Being constantly tardy or absent means someone has to be there in the absent therapist’s place. This is unfair to the co-workers.

The employer may have agreements with the therapist. This may include a compact that clients acquired through the business may not be re-directed by the therapist if the therapist moves.

There are three concerns with violating such a proscription. First, there is the ethical dimension. Second, the industry is a small community and doing so may gain a reputation that would jeopardize future employment opportunities. Third, the employer might sue the therapist. Therapists who sneak clients away from the work place have about a 95% chance the employer will hear about it. While the employer may not fire the therapist (immediately), word is soon spread, damaging the therapist's reputation and opportunities for being hired by another employer.

For example, it is not uncommon for a business owner to call around to other clinics when reviewing an applicant to see if any one has heard of the applicant. In a few short calls, the business owner knows the applicant's reputation. The therapist might be surprised how little things the therapist thought were unnoticed actually made a big impression. In a major urban county, it takes the author a maximum of three phone calls to find out about an applicant who has worked in the county.

On the other hand, having a reputation of getting along with co-workers, treating them fairly, avoiding harmful gossip and being honest will attract employers, who will even attempt to entice the therapist away from present employment. Former co-workers will influence their present employers to do the same.

Chapter Summary

- Having the client on the table and trying to up-sell them a product may be exploiting this trust unless the therapist can clearly identify that the client would benefit.
- The therapist may have a compact with the employer that clients acquired through the business may not be re-directed by the therapist if the therapist moves.

Chapter 30

“display/discuss schedule of fees in advance of the session that are clearly understood by the client or potential client.”

--NCBTMB Standards of Practice IV (k)

“make financial arrangements in advance that are clearly understood by and safeguard the best interests of the client or consumer.”

--NCBTMB Standards of Practice IV (l)

The posting of fees with explanation of services being provided and the length of these services prevents misunderstandings. The licensing jurisdiction may require this. Even though the client can read the fees, the arrangements should be verbally repeated prior to the session to avoid an awkward situation later.

If the clinic bills insurance but requires the client to pay at the time of service, making this clear at the time the appointment is scheduled will avoid any confusion or discomfort later. If there are services the insurance may not reimburse, the client should be informed.

Selling additional products and services at the time of service is a common practice in some industries, such as the beauty field. In the massage bodywork industry, this is not so common. If not done with good intention, it can come off looking like high pressure sales and greed. Assure the client the other product or service is only an idea and not an expectation; that this service or product could always be gotten at a later time. This lets the client know that their interests are being looked after. The price of any

subsequent service or product should be identified at the time of offer. One shop has prices posted on a web site which also accepts payments.¹⁴⁹ If the client has to ask, “How much is that?” it could appear the therapist is just a salesperson looking for “deep pockets.”

Brochures or other written material should contain prices. If prices change frequently, a separate price sheet can be inserted into the brochure.

Other unethical ploys such as skimping on the time or treatment, leaving the client unnecessarily, utilizing other time fillers such as five minutes of back-slapping, or switching services, are irritations for the client. If the client has agreed to a massage, twenty minutes of hot stones and solitude are inappropriate.

Chapter Summary

- Even though the client can read the fees, the arrangements should be verbally repeated prior to the session to avoid an awkward situation later.
- If the therapist up-sells the client during the massage, additional charges should be clearly identified.

¹⁴⁹ Hands for Health, *Prices and Gift Certificates*, 2004, <http://www.handsforhealth.com/prices.html>.

Chapter 31

“follow acceptable accounting practices.”

--NCBTMB Standards of Practice IV (m)

“maintain accurate financial records, contracts and legal obligations, appointment records, tax reports and receipts for at least 4 years.”

--NCBTMB Standards of Practice IV (o)

The licensing jurisdiction and organizations the therapist belongs to may have accounting requirements. The Internal Revenue Service certainly does. Clean accurate record keeping is a must as one never knows what might come up that they may need to retrieve some of the information. All receipts and copies of outgoing receipts need to be saved for a certain period of time.

Receipts should be offered to clients. The licensing jurisdiction or city may require this. This is particularly important if the client is running an account, insurance is being billed, or a credit card is being used.

Keeping records and receipts for all expenses including supplies, clothes, linen and rent will provide valuable deductions at tax time.

If the therapist has hired other therapists, the decision must be made whether to treat them as employees or independent contractors. Employees require more paperwork, including

deductions for income tax, social security and Medicare taxes.¹⁵⁰ Employees may be eligible for workers compensation and unemployment benefits. Independent contractors are simply furnished with a 1099 at year's end. It may come into question whether the designated independent contractor truly fits the criteria. There is an independent contractor guild available.

According to the Internal Revenue Service (IRS), if the hiring therapist has the right to direct or control the worker, the worker is an employee.¹⁵¹ Indications would include scheduling and training the worker.¹⁵² If the employing therapist has routines the worker is expected to follow, premises the worker is expected to work in, the right to discharge or terminate the worker, or a continuing working relationship with the worker, the worker is probably an employee.¹⁵³ Other indications the worker is an employee are when the employing therapist furnishes materials (such as lotion and towels) for the worker to use or pays the worker by the hour, week or month.¹⁵⁴ A wrong decision on the employee/independent contractor question could be expensive if the IRS determines the status differently in an audit.¹⁵⁵ Back taxes and penalties may then be due.¹⁵⁶

Sometimes big companies make mistakes in this area. Microsoft hired independent contractors who had fewer benefits

¹⁵⁰ Internal Revenue Service, *Frequently Asked Tax Questions and Answers: Keyword: Employee-Independent Contractor*, undated, <http://www.irs.ustreas.gov/faqs/faq-kw68.html>.

¹⁵¹ Internal Revenue Service, *Frequently Asked Tax Questions and Answers: Keyword: Employee-Independent Contractor*, undated, <http://www.irs.ustreas.gov/faqs/faq-kw68.html>.

¹⁵² Internal Revenue Service, *Frequently Asked Tax Questions and Answers: Keyword: Employee-Independent Contractor*, undated, <http://www.irs.ustreas.gov/faqs/faq-kw68.html>.

¹⁵³ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁵⁴ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁵⁵ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁵⁶ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

than employees and wore different colored badges.¹⁵⁷ These differences did not impress the IRS when it looked into the matter.¹⁵⁸ Once the IRS determined the “independent contractors” were really employees, the new employees sued Microsoft for back benefits, which the court awarded.¹⁵⁹

The IRS will determine whether a worker is an employee or independent contractor if asked. This requires the worker’s consent.¹⁶⁰ The form number is SS-8 and it is available at <http://www.irs.gov/pub/irs-pdf/fss8.pdf>.

If an employing therapist actually has employees, it may be worthwhile to hire an inexpensive payroll service, though payroll software is available.

At some point, it may be desirable to hire an accountant. Talking to others in the industry may be a short cut to finding a good one who has experience in the massage and bodywork field. An accountant who has worked with those in the beauty business could also be a good choice, as the issues are similar.

Records need to be kept for some time. The states and IRS will have rules. The NCBTMB requires they be kept at least four years. (NCBTMB Standard of Practice IV (0).) An accountant will probably suggest keeping them longer than any of these requirements.

¹⁵⁷ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁵⁸ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁵⁹ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

¹⁶⁰ TurboTax, *Employee vs. Independent Contractor*, 1997-2004, <http://www.turbotax.com/articles/EmployeevsIndependentContractor.html>.

Chapter Summary

- Receipts should be offered to clients.
- The proper decision must be made whether to treat people who are hired as employees or independent contractors.
- The accountant will probably suggest keeping records longer than otherwise required.

Chapter 32

“file all applicable municipal, state and federal taxes.”

--NCBTMB Standards of Practice IV (n)

There is a Buddhist saying that if one cannot sleep it is because of greed. The person who does not report all their income can probably expect some restless nights worrying about the consequences. They could be penalized by the government and forced to endure years of subsequent auditing. This could also impact their NCBTMB certification and thus possibly their ability to earn a living in this field. It is said that one never knows when one is going to be audited. The income has to match the lifestyle. If the Internal Revenue Service (IRS) does not find proper income documentation, they can do a “standard of living analysis” to assist in determining income.¹⁶¹ There may be some hard explaining to do.

One problem in not being candid is that someone the therapist knows, works with or does business with may turn them in for the reward. The IRS rewards these whistleblowers with up to 15% of the amount of taxes and penalties recovered (but not interest) (though the money may take up to two years to arrive and an IRS study indicates only 1% of whistleblowers actually see any money.¹⁶² Another source put the percent of paid whistleblowers at 8%.¹⁶³ By the way, the reward is fully taxable.¹⁶⁴) It is undesirable

¹⁶¹ Anonymous, *Beauty and Barber Shops: IRS White Paper*, undated, http://www.pro1040.com/beauty_salons_mssp.htm.

¹⁶² Jay MacDonald, *Making tax cheats pay up and pay off*, 2004, <http://www.bankrate.com/brm/itax/news/20030221a1.asp?print=on>.

¹⁶³ Tom Herman, *Ask Dow Jones: Can You Collect a Reward for Tipping Off the IRS?*, 2002, http://www.salestax.org/news/thisweeksnews_10-4-02.html, National Retail Sales Tax Alliance.

¹⁶⁴ Tom Herman, *Ask Dow Jones: Can You Collect a Reward for Tipping Off the IRS?*, 2002, http://www.salestax.org/news/thisweeksnews_10-4-02.html, National Retail Sales Tax Alliance.

to give another that kind of power.

The IRS reportedly keeps a close eye on the self-employed because it believes most of the cheaters are there.¹⁶⁵ In an audit, the IRS will have access to bank account and other financial records to look for deposits of unreported income.¹⁶⁶ Potential problem areas include reporting personal living expenses as business ones (including automobile and travel expenses), large entertainment expenses, employees wrongly classified as independent contractors, not making payroll tax deposits, borrowing from employee tax funds, and skimming cash off receipts.¹⁶⁷ The self employed cash business's chance of being audited is said to be well above average.¹⁶⁸ The IRS has prepared guides for its auditors on about one hundred largely self-employed businesses (massage does not have its own guide).¹⁶⁹

On the other hand, the therapist should take all deductions available. Ones that self-employed people often miss are health insurance premiums, business credit card finance fees, and cell phone and Internet connection charges.¹⁷⁰

Timing in paying taxes can be important. Self-employed persons may need to pay estimated taxes four times a year. Being late on these taxes or underestimating the amount due can result in fines. Payroll taxes must also be paid on time. Payroll service

¹⁶⁵ Robert Grossbart, *Self-Employed as Audit Targets*, 2004, <http://www.mdbankruptcy.com/lawguide/auditsandappeals/Self-EmployedasAuditTargets.asp>, Grossbart, Portney & Rosenberg, PA.

¹⁶⁶ Robert Grossbart, *Self-Employed as Audit Targets*, 2004, <http://www.mdbankruptcy.com/lawguide/auditsandappeals/Self-EmployedasAuditTargets.asp>, Grossbart, Portney & Rosenberg, PA.

¹⁶⁷ Robert Grossbart, *Self-Employed as Audit Targets*, 2004, <http://www.mdbankruptcy.com/lawguide/auditsandappeals/Self-EmployedasAuditTargets.asp>, Grossbart, Portney & Rosenberg, PA.

¹⁶⁸ Robert Grossbart, *Self-Employed as Audit Targets*, 2004, <http://www.mdbankruptcy.com/lawguide/auditsandappeals/Self-EmployedasAuditTargets.asp>, Grossbart, Portney & Rosenberg, PA.

¹⁶⁹ Worldwideweb Tax, *IRS Audit Guides*, 1995-2001, http://www.wwwwebtax.com/irsdemographics/audit_guides.htm.

¹⁷⁰ <http://www.keepmedia.com/Register.do?oliID=225>. Web site down.

companies and banks may offer to pay those taxes for a fee.¹⁷¹

The bottom line is that reporting income correctly and immaculate recordkeeping goes a long way towards peace of mind.

Chapter Summary

- The person that does not report all their income can probably expect some restless nights worrying about the consequences.
- The IRS reportedly keeps a close eye on the self-employed because it believes that is where most of the cheaters are.

¹⁷¹ Robert Grossbart, *Self-Employed as Audit Targets*, 2004, <http://www.mdbankruptcy.com/lawguide/auditsandappeals/Self-EmployedasAuditTargets.asp>, Grossbart, Portney & Rosenberg, PA.

Chapter 33

“recognize his/her personal limitations and practice only within these limitations.”

--NCBTMB Standards of Practice V (a)

“be knowledgeable of his/her scope of practice and practice only within these limitations”

--NCBTMB Standards of Practice I (I)

Ear candling, colonics, hot stone massage—all these require some sort of training or certification and may necessitate separate licensing in some cases. The therapist should be certain the city business license and insurance covers these extra-massage bodywork activities. Massage itself has various areas which require special training (such as pregnancy, infant and geriatric) and the therapist should obtain these skills before practicing in these specialties.

If the therapist is ill or tired, taking a break from the practice is needed. Because most massage and bodywork is physical labor, pushing oneself to go on may only result in worse health and “burnout.” Additionally, the client might catch the therapist’s illness. One does not have to guess who the client will be thinking of when they have a temperature of 104 degrees and are coughing their brains out!

The therapist should not over-exert. Doing so can hurt joints and hands. Whatever profit is missed by keeping within limitations can be made up another day.

Sometimes an employer wants a therapist to work even though the therapist has serious things to tend to at home. Employers see potential income and no one available to provide services. If the therapist, to appease an employer, puts the job before personal responsibilities, the employer may abuse the therapist, expecting them to meet all crises while other employees are sleeping in or sunning in Acapulco. The therapist should let the employer know the order of their priorities upon being hired. The therapist cannot function well if a child is at home running a fever and getting insufficient care or a pet is suffering for its routine walk. Massage is a flexible, compassionate industry. The author, having been an employer in massage industry for over twenty years, can report the vast majority of employers have no conflict with therapists who need to take time off for family's sake. The therapist free of worry and guilt is an excellent worker. Any time missed with family cannot be retrieved...ever.

Massage requires exerting a great deal of physical and psychic energy. The therapist needs to take care and stay in shape. Giving so much requires putting something back. The therapist needs to replenish. Massage is a giving profession where the goal is to serve others and make other people feel well but the therapist cannot give what the therapist does not have. **It is unethical to be mercenary with oneself or family by sacrificing to a job or unreasonable employer.**

There are so many styles of bodywork these days. While many are fascinating, it has been the author's experience, having worked with crews of therapists each with no less than 25 years of experience under their belts, that the chances are the therapist will fall into their own style; one that fits their body mechanics and temperament. They adopt dabs of techniques only occasionally. Though they are always eager to learn something new, it had better be really good because they have their technique and it works for them.

Chapter Summary

- If the therapist is ill or tired, the therapist should recognize this and take a break from the practice.
- The therapist needs to take care and stay in shape.

Chapter 34

“recognize his/her influential position with the client and shall not exploit the relationship for personal or other gain.”

--NCBTMB Standard of Practice V (b)

The industry is a caring one which looks out for the client. Observation of this paramount value will take care of this ethic.

Products

The client who is interested only in a particular treatment and no products should not be persuaded otherwise. Some massage and bodywork organizations have ethics which frown on commercializing the industry. For example, the Alberta Registered Massage Therapists Society says “refrain from using ... professional credentials to promote or discuss commercial products or services.”¹⁷²

The NCBTMB ethic, however, is more exactly concerned with exploitation.

If the therapist is given commissions by a third party salesperson or owner to push a product, the therapist should be careful that the product actually benefits the client and is something the client truly desires. Beside the ethical implications, the clients may come to resent having merchandise toted to them. Buying products was not their intent, especially when the product does not really serve them and only adds to their expense.

¹⁷² Steering Committee, *The Proposed Code of Ethics*, 2003,
http://www.armts.com/documents/The_Proposed_Code_of_Ethics.pdf.

In the beauty industry, selling products is important to the shop because it requires no further work or time on the part of the beautician. This is side money and can be quite lucrative. The same can happen in the massage and bodywork industry. However, it is important because of the nature, or nurture to be more precise, of this industry that only something that the client needs be suggested. The clinic can have many products on display but suggesting them to the client just for the purpose of making money is unethical in this industry. A good display with little notes attached to products explaining what each product does is all that is necessary to make a sale or two. If the client has money to spare and is in the mood to buy something, they will.

Referrals

Do not make a referral to another therapist simply because the therapist is getting a kickback. That is an ugly practice. Unless the referral benefits the client, it should not be made.

Confidentiality

The therapist will generally treat information received from a client as confidential (see chapter 9).

Relationship Outside Massage

It may be necessary to establish boundaries in the non-massage relationships—massage is what the therapist does for a living and does not reflect the therapist’s feelings or emotions about the client.¹⁷³ Any outside-of-massage relationship should be “non-damaging” to the client.¹⁷⁴

¹⁷³ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

¹⁷⁴ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

In the relative intimacy of the therapist-client treatment, some clients may begin to feel an attraction for the therapist. While it is apparently possible to date a client, it is clear from the Standards of Practice that in order to engage in a sexual relationship with a client, the therapist must cease to see the client professionally and thereafter wait six months. (See NCBTMB Standards of Practice VI (a).)

Addiction

Some clients may become addicted to massage. While this may seem great for the therapist financially, the client has a problem. If the therapist thinks a client is taxing their finances in order to satisfy a massage addiction, the therapist may save them money by offering an affordable package, space their appointments further apart or simply ask them how much they would like to spend on massage each month and set up client's appointments accordingly.

Chapter Summary

- Having the client on the table and trying to sell a product may be exploiting this trust unless the therapist can clearly identify that the client would benefit.
- Do not make a referral to another therapist simply because the therapist is getting a kickback.
- The therapist will generally treat information received from a client as confidential.
- While it is possible to date a client, in order to engage in a sexual relationship with a client, the therapist must cease to see the client professionally and thereafter wait six months.

Chapter 35

“recognize and limit the impact of transference and counter-transference between the client and the certificant.”

--NCBTMB Standard of Practice V (c)

“use appropriate draping to protect the client’s physical and emotional privacy”

--NCBTMB Standard of Practice I (k)

The NCBTMB defines *transference* as “a client’s unresolved feelings and issues which are unconsciously transferred to the therapist” and *counter-transference* as “a therapist’s unresolved feelings and issues which are unconsciously transferred to the client.”¹⁷⁵

The two terms come from psychology where, originally regarded as impediments in the first part of the last century, they have become seen as essential parts of the psychological healing process.¹⁷⁶ Massage and bodywork are not essentially psychology, however, and the NCBTMB does not want these dynamics in the massage room.

One way to avoid the issue is to establish rigorous boundaries and to monitor one’s thoughts and behavior for incidents coming close to the established limits. The therapist/client relationship is a professional commercial transaction and is not the appropriate forum to handle latent psychological issues.

¹⁷⁵ NCBTMB, “Appendix 7: Standards of Practice: Glossary of Terms Used in This Document,” p. 25, undated, *Approved Provider Application for Continuing Education*.

¹⁷⁶ Rus Gandy, *Some aspects of transference*, 2005, <http://www.chisuk.org.uk/articles/result.php?key=32>, Complementary Healthcare Information Service – UK.

The therapist can review the therapist's own feelings and issues to make sure they are kept outside of the session. But the Standard also requires the therapist to "limit the impact" of the client's counter-transference. The therapist can move towards this goal by not becoming too familiar with the client. Time boundaries established by the therapist will emphasize the professional, non-personal nature of the session. One article recommends saying "I will be working on you for about fifteen minutes" and "I have about five minutes left. Is there any particular area you would like me to focus on for that time?"¹⁷⁷ This reinforces the professional, commercial nature of the session and diminishes the intimacy which may contribute to counter-transference.

Physical boundaries between the therapist and client will also inhibit transference. The therapist should be outside the room when the client disrobes or dresses and should utilize proper draping.

While appropriate draping is taught in the schools, there may be additional requirement by the licensing jurisdiction or affiliates.

If the client's energy seems off, it is usually the amount of pressure or else concern about their bodies. Women tend to do a lot of chatting when they are uncomfortable with their bodies.

It is always a good idea to ask if the drape style you're planning is okay with the client. It would not be wise to suggest they are self-critical, rather it is better say something like "I will always protect your modesty, so keep me informed." Chances are that is enough get them to put their guard down and relax.

¹⁷⁷ Dianne Polseno , *Exploring Boundaries*, undated, <http://www.bancroftsmt.edu/exploringbound.htm>.

Chapter Summary

- The therapist/client relationship is a professional commercial transaction and is not the appropriate forum to handle latent psychological issues.
- Physical boundaries between the therapist and client will also inhibit transference.

Chapter 36

“avoid dual or multidimensional relationships that could impair professional judgment or result in the exploitation of the client or employees and/or co-workers.”

--NCBTMB Standards of Practice V (d)

A multidimensional relationship is one in which the therapist and client interact in ways outside the therapist/client paradigm.¹⁷⁸ This naturally makes things more complicated.

The Standard does not necessarily prohibit a relationship/friendship/existence with the client outside the therapist/client model but it requires two tests be met. The multidimensional relationship must not impair professional judgment and it must not exploit the client or someone else.

There is a tendency to break the rules for friends. But the multidimensional relationship client must be treated, ethically, the same as a regular client. Similarly, a therapist should not ask employees or co-workers for favors for a multidimensional relationship client which would violate any ethics.

The therapist must see the multidimensional relationship client as a *client* when that role is being enacted. All the usual rules apply. Even when the multidimensional relationship client is in the non-client role, the therapist still has additional responsibilities above and beyond those of a normal business relationship or friendship. The therapist may still not exploit the client. There are many friendships in the real world where one party exploits the other and the other party, for whatever reason, remains in the

¹⁷⁸ The American Massage Therapy Association's Code of Ethics does not address the issue. LB Massage Alliance, *AMTA Code of Ethics*, 2003, <http://www.lbmassagealliance.org/html/amtacode.html>.

friendship. In a multidimensional relationship, the therapist cannot be the exploiter.

The therapist should not take advantage of the disparity between therapist and client.¹⁷⁹

The relative intimacy of the massage setting may engender romantic ideas and it may be necessary to establish boundaries in the non-massage relationships—massage is what the therapist does for a living and does not suggest the therapist has inappropriate feelings or emotions about the client.¹⁸⁰ Any outside-of-massage relationship should be “non-damaging” to the client.¹⁸¹ If the therapist becomes interested in moving beyond the multidimensional relationship into a sexual relationship, the multidimensional relationship must be ended. In other words, The NCBTMB requires the other person must cease to be a client and the couple must then wait six months to pursue a more intimate relationship. (See NCBTMB Standards of Practice VI (a).)

A MDR need not be sexual; it could include business. The standard is similar: the therapist must take particular care that the client is not harmed.

One author claims that certain other professions have ethics which forbid socializing or any non-professional interaction with clients.¹⁸² That is not the ethical standard in massage but it is also true the existence of multidimensional relationship makes the therapist’s life more challenging.¹⁸³

¹⁷⁹ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

¹⁸⁰ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

¹⁸¹ Body Synergy Institute, *Body Synergy Institute Code of Ethics*, undated, <http://www.bodysynergyinstitute.com/ethics.html>.

¹⁸² Dianne Polseno, *Boundaries Part II*, undated, <http://www.bancroftsmt.edu/boundaries.htm>.

¹⁸³ Dianne Polseno, *Boundaries Part II*, undated, <http://www.bancroftsmt.edu/boundaries.htm>.

Chapter Summary

- A multidimensional relationship is one in which the therapist and client interact in ways outside the therapist/client paradigm.
- The multidimensional relationship must not impair professional judgment and it must not exploit the client or someone else.
- If the therapist becomes interested into a sexual relationship, the other person must cease to be a client and the couple must wait six months to pursue a more intimate relationship.

Chapter 37

“not engage in any sexual activity with a client.”

--NCBTMB Standards of Practice V (e)

In our modern American culture it is not uncommon for two people to act on a sexual attraction in the moment. However, there are many reasons why this should not happen between client and therapist. First of all, it is unprofessional. Second, the NCBTMB Standards of Practice VI (a) strictly forbids it **until the therapist/client relationship has been over for six months**. Third, any sexual familiarity that takes place close to the time of therapy may be misconstrued as prostitution.

One might say prostitution is a crime of words. The accused says an act will be performed for a price. It is the money that raises it from the level of a date or tryst. However, if the sexual event closely proceeds a therapy session, it can be suggested that the sexual service price is included in the therapy cost. This is not a strong case for the prosecution. Therefore, a common scenario is the initial charge of prostitution is reduced to the charge of lewd and lascivious or plea bargained to disturbing the peace. This may threaten the therapist's license in any case as licensing jurisdictions can include this lesser conviction in the licensing ban.

Another reason not to engage sexually with a client is that if the therapist decides to have a committed relationship with the client, the client may have a difficult time picturing the therapist not doing the same with the other clients. In any case it changes the way in which the client views the therapist. The therapist's professionalism is compromised. The client may become too familiar with the therapist after breaching that ethic and reining the client back to proper behavior may add to the awkwardness of the

situation. Further, other therapists and employees of the clinic may suffer from inappropriate behavior on the part of the ruined client.

The difference between being touched for professional massage and for arousal is obvious. Erotic massage may be an effective pastime for a couple in private but it is across the boundary for what is permissible in professional massage. Dentistry is nonsexual; so is massage in a professional setting.¹⁸⁴ Some clients may need to be educated to appreciate the distinction.

It might be argued that this ethic only restricts sexual activity on the therapy premises. However, read in conjunction with Standards of Practice 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.”), it is clear the Standards intend to regulate all interactions between therapist and client, whether professional or private, on the premises or elsewhere.

“Research and consumer surveys leave no doubt that massage is now thought of first and primarily as a legitimate, legal, and honorable profession,” writes Linda Diane Feldt, past president of the American Polarity Therapy Association.¹⁸⁵ That reputation can be burnished—or tarnished—by the actions of every therapist. Lawyers did not become a joke because every lawyer was bad and rapacious but because a small percentage were dishonest and greedy. Every therapist represents not only that therapist’s practice but also the entire industry.

¹⁸⁴ Ben E. Benjamin, *Touch, Intimacy and Sexuality*, 2000, http://www.amtamassage.org/journal/su_00_journal/su_00_sexuality_touch_intimacy.html, American Massage Therapy Association.

¹⁸⁵ Linda Diane Feldt, *Regulation of Touch Therapies Is Not An Easy Thing*, 2002, <http://www.a2altmed.com/ArticlesFull.asp?article=Feldt1>, Ann Arbor Alternative Medicine.

Chapter Summary

- Erotic massage is across the boundary for what is permissible in professional massage.
- The Standards intend to regulate all sexual interactions between therapist and client, whether professional or private, on the premises or elsewhere.

Chapter 38

“acknowledge and respect the client’s freedom of choice in the therapeutic session.”

--NCBTMB Standards of Practice V (f)

“obtain voluntary and informed consent from the client prior to initiating the session”

--NCBTMB Standards of Practice I (i)

“... respect the client’s right to refuse the therapeutic session.”

--NCBTMB Standards of Practice V (g)

One might think that signing up the client and getting their health information means they have put themselves in the therapist’s hands. However, it is very important the therapist make it clear what the treatment will consist of and the cost. Without doing so the therapist runs the risk of the client balking half way through the treatment with “This isn’t exactly what I was expecting” or the classic, “Now what is a Swedish massage?” and the therapist just happened to be doing Shiatsu. That is why it is very important that each client understands the type of treatment they will be getting and gives their consent. In fact, the client may say nothing and still go away thinking they did not consent to the type of treatment they received. A brief description of the therapy and then getting consent by following the description with something like “Is that alright with you?” is one way of getting consent.

One should never insist on a particular treatment if the client has reservations. The therapist will probably regret it later. The client may leave disgruntled and never return. Above all, it is unprofessional, rude, pushy and insensitive.

If the therapist is employed by someone else (such as a doctor or chiropractor) and finds the client already in the room, the process of informing the client and getting consent before the treatment begins still applies. It is a good idea for the therapist be introduced to the client by the doctor or chiropractor and told the therapist will be doing “x” procedure. Then the therapist can go into details of the type of therapy and get consent. “Is that OK with you?” can be asked to ensure the client’s freedom of choice.

In the worst case, massaging a person without involving the person’s permission would be assault. Assault is defined as “the crime or tort of threatening or attempting to inflict immediate offensive physical contact or bodily harm that one has the present ability to inflict and that puts the victim in fear of such harm or contact.”¹⁸⁶ Notice that assault does not require actual touching. Just the thought that one could be touched is enough. While it is unlikely this will happen, obtaining consent will eliminate this possibility or similar scenario.

Discussing details of the treatment will provide the opportunity for the client to exercise any choices desired. Making sure client knows what is going to occur (full consent) obviates any problems. Telling the client to let you know if something is uncomfortable is helpful.

The problem of freedom of choice may be particularly exacerbated where the therapist is male and the client is female.

¹⁸⁶ Findlaw for Legal Professionals, *assault*, 1994-2005, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=6d/6d98388177d2becdc67a32b016ea774d>.

The therapist should take special pains to acknowledge the client's comfort level.

While the therapist may not want to repeatedly go through the process of informing the same client about the treatment or ask permission to treat each time, something must take place to comply with the standard.

The first time or two the client is treated, they would expect this formality. After a while it can be smoothed out a bit. Many therapists upon walking into the treatment room, say something to the client like "Are you ready for your massage?" Of course no one ever hears a "No" on that question. This is doubly good because it signals the client to let go of the high intensity of the outside world and shift into a different environment.

A new therapist may feel excited to demonstrate skills. But doing so with an unwilling victim may make the recipient feel trespassed upon. Putting one's hands on someone, especially in an incongruent setting, can create an awkward situation, even though the intent is benevolent. Professionalism has certain requirements.

Language may prevent or inhibit a client's exercising freedom of choice. America is becoming increasingly multicultural. In New York City, for example, more than 170 languages are spoken.¹⁸⁷ If the therapist cannot communicate in the client's language, it is unlikely conventional consent can be achieved and the treatment may need to be postponed unless some alternatives are in place.

The point of this ethic is not to assume. The therapist's goal is to be aware and caring. Guessing what a client wants is less than

¹⁸⁷ City of New York, *311 is New York City's Phone Number for Government Information and and Non-Emergency Services*, 2004, <http://home.nyc.gov/html/311/home.html>.

this. Ethically, only when everyone understands and is in agreement is the treatment permissible.

Occasionally nothing can save the session. The client wants out. Sometimes a client has a preconceived idea about what the treatment is going to be like. Perhaps the client has had a previous treatment by a therapist who called it by the same name but performed the treatment entirely differently. Whatever the reason, it would be ethically wrong for the therapist to ignore any objections to treatment the client might raise, even after the treatment has been in progress. One size does not fit all in massage bodywork and the client may simply be uncomfortable; the nurturing environment in which massage should occur cannot be maintained in this setting.

Listening to the client may leave the possibility of return open if the reason for the termination is unrelated to the therapist. If the therapist is bullheaded and tries to continue the massage, the chances of the client returning are nil. The client may actually become angry.

Everyone has to be in charge of their own body and sensitivities. This Standard respects those rights.

The therapist should not assume the reason for the client's termination. The client may not be comfortable giving the true reason for leaving. The departure may be completely unrelated to the therapist or the therapist's performance. **Once the client makes this assertion, the therapist should end any touching. The therapist might say, "Absolutely. No problem" and step away from the client.** Any discussion should be later, after the client is off the table or massage chair and dressed to leave.

Oftentimes the client has to be somewhere. The client is not paying attention to the time while on the table. If the therapist is

going over the time, it would be appropriate to mention this to the client. If the client should miss an important appointment elsewhere because the therapist did not warn of the overtime, client may resent having gone there in the first place. The missed appointment cancels out the feel good benefit of the treatment.

The refund policy of the clinic should be clearly posted so there is no question on this issue if a client requests termination of the session.

Chapter Summary

- It is very important that each client understands the type of treatment they will be getting and gives their consent.
- Language may prevent or inhibit a client's exercising freedom of choice.
- Once the client requests the treatment be terminated, the therapist should end any touching.

Chapter 39

“refrain from practicing under the influence of alcohol, drugs or any illegal substances (with the exception of a prescribed dosage of prescription medication which does not significantly impair the certificant.)”

--NCBTMB Standards of Practice V (h)

The client expects the therapist to put the client’s concerns first and to protect the client in a potentially vulnerable situation. This may be difficult to achieve if the therapist is not functioning at full capacity.

Alcoholic intoxication reduces fine motor control so a therapist in that condition might find it difficult to perform.¹⁸⁸ The condition can also result in profuse sweating which might prove uncomfortable to the client.¹⁸⁹ At certain levels, the intoxicated person may engage in familiar or aggressive behavior which is inappropriate to the situation.¹⁹⁰ This could create further ethical issues.

The first areas to be impaired are those requiring training and experience,¹⁹¹ which is to say the very touchstones of a therapist’s professionalism are being attacked. Despite this, the intoxicated therapist may feel exceedingly confident, unaware that all is not as it should be.¹⁹²

¹⁸⁸ Anonymous, *Effects of Alcohol Intoxication*, undated, <http://www.indiana.edu/~adic/effects.html>.

¹⁸⁹ Anonymous, *Effects of Alcohol Intoxication*, undated, <http://www.indiana.edu/~adic/effects.html>.

¹⁹⁰ Walter Lundstein, *Lesson Eleven - Controlled Substance & Alcohol Abuse; Forgery, Arson!*, 2000, <http://daphne.palomar.edu/wlundstein/crimlawleseleven.htm>.

¹⁹¹ Ron Jourard, *Alcohol and the Body*, 1999-2005, <http://www.criminal-lawyer.on.ca/alcohol-5.html>.

¹⁹² Ron Jourard, *Alcohol and the Body*, 1999-2005, <http://www.criminal-lawyer.on.ca/alcohol-5.html>.

Legal intoxication may occur between two and three drinks,¹⁹³ although “[s]ome performance degradation is observed at any measurable alcohol level.”¹⁹⁴ The relative impairment caused by intoxication may be gauged from the calculation that a driver at the legal level of intoxication is 6 times more likely than a sober driver to have an accident.¹⁹⁵ It is unlikely that a therapist can maintain a useful session if the therapist is six times less capable than usual.

Some antihistamines available without a prescription mimic alcoholic effects and should be avoided while working.¹⁹⁶ Fatigue can also produce intoxicated-like behavior. An Australian study showed impairment after being awake 17 hours.¹⁹⁷ At 24 hours without sleep, behavior was similar to that of a legally intoxicated person.¹⁹⁸

In some jurisdictions, a therapist’s license may be suspended if the therapist is convicted of driving while intoxicated.¹⁹⁹

Cannabis can also impair motor function and may lead to social withdrawal.²⁰⁰ This would be counterproductive as the client did not pay to be alone. Anxiety, panic and paranoia may occur.²⁰¹ Attention to tasks may decrease.²⁰²

¹⁹³ <http://www.co.broward.fl.us/mei00253.htm>. Web site down.

¹⁹⁴ <http://www.hillsboroughmadd.org/maddlaw.htm>. Web site down.

¹⁹⁵ John Brick, *Intoxicated Driving*, 1996, <http://members.aol.com/intoxikon/intoxicated.driving.html>, Intoxikon International.

¹⁹⁶ Emedicine, *Alcohol Intoxication: Advice to Law Enforcement Personnel*, 2003-2005, <http://emedicinehealth.com/articles/11412-8.asp>.

¹⁹⁷ Personal MD, *Fatigue, Like Alcohol, Impairs Performance*, 1997, <http://www.personalmd.com/news/a1997071701.shtml>.

¹⁹⁸ Personal MD, *Fatigue, Like Alcohol, Impairs Performance*, 1997, <http://www.personalmd.com/news/a1997071701.shtml>.

¹⁹⁹ Office of the Professions, *Summaries of Regents Actions on Professional Misconduct and Discipline*, 2003, <http://www.op.nysed.gov/apr03.htm>, New York State Education Department.

²⁰⁰ Walter Lundstein, *Lesson Eleven - Controlled Substance & Alcohol Abuse; Forgery, Arson!*, 2000, <http://daphne.palomar.edu/wlundstein/crimlawleseleven.htm>.

²⁰¹ Department of Health and Ageing, *The health and psychological consequences of cannabis use*, 2004, <http://www.health.gov.au/pubs/drug/cannab2/ch9.htm>, Australian Government.

²⁰² Erowid, *Cannabis and Driving*, 2003, http://www.erowid.org/plants/cannabis/cannabis_driving.shtml.

The therapist needs to be in charge to provide for their and the client's safety and to maintain the professionalism of the setting. Alcohol or other substances degrade the therapist's ability to perform these functions and should not be ingested prior to or at work.

The abuse of drugs or alcohol may affect the therapist's license

Chapter Summary

- Legal intoxication may occur between two and three drinks.
- Some antihistamines available without a prescription mimic alcoholic effects and should be avoided while working.
- Fatigue can also produce intoxicated-like behavior.

Chapter 40

“have the right to refuse and/or terminate the service to a client who is abusive or under the influence of alcohol, drugs or any illegal substance.”

--NCBTMB Standards of Practice V (i)

Many clinics state in advance they will not treat persons who are intoxicated.²⁰³ One says that the potential client will still be charged for the appointment even though the client was turned away for being drunk.²⁰⁴

There are many reasons why the client should not be served while inebriated. The client will not get the full enjoyment or benefit from the treatment. The client, albeit unintentionally, may be a danger to himself/herself or to others. The reduced sense of decorum inherent in intoxication may disrupt the quiet, calmness and serenity of the clinic, lessening other clients' experience. The client could start vomiting or in any case be discovered during the treatment to be so intoxicated and sloppy that the whole experience is disgusting.

Another reason is legal. If the therapist provides service knowing a person is intoxicated, the client may be able to void the transaction and get the return of the client's money.²⁰⁵ Another authority states the client must be so intoxicated as to not have understood “the nature and consequences of the transaction.”²⁰⁶ The danger here of losing the fee is probably less therefore than

²⁰³ Sue Volkman, *About Sue Volkman*, 2003, <http://www.massagogy.com/>; Sacred Space, *Making Peace with Mind, Body, Spirit*, undated, <http://www.peacemaker-enterprise.com/sacredform.php>.

²⁰⁴ Anonymous, *Policies: What You Can Expect as a Client*, undated, <http://www.geocities.com/stephanieehret/Policies.html>.

²⁰⁵ Lectric Law Library, *Contract Basics*, undated, <http://www.lectlaw.com/files/bul03.htm>.

²⁰⁶ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

when dealing with a minor. The client must disaffirm the session soon after regaining sobriety.²⁰⁷ It may also be illegal to treat an intoxicated person. The city of Tulsa, Oklahoma has an ordinance saying no one who is intoxicated may be on the massage premises.²⁰⁸

The person who is intoxicated may be spoken to firmly and clearly but not be embarrassed or ridiculed.²⁰⁹ However, calling 911 may become necessary if the person becomes a danger to the therapist, staff or other clients.²¹⁰ Nipping it in the bud is a way of avoiding all that.

Massage causes blood circulation to increase and this may multiply the effects of alcohol in the system.²¹¹ The effect continues after a massage, when a person can become intoxicated on only half the usual alcohol, one therapist notes.²¹²

Drugs are a separate beast. If someone is on drugs, it is likely they will have some in their possession. They may go so far as to hide their drugs in the therapy room, thinking it would be safer. The burden would fall upon the clinic and therapist to prove they had no knowledge of the drug and are not in the business of selling drugs if the police were to get involved. Even if no drugs are found, the authorities will want to know where the client got the drugs to get “high.”

²⁰⁷ Outlaws Legal Services, *Contracts*, 2000, <http://www.outlawslegal.com/refer/contracts3.htm>.

²⁰⁸ City of Tulsa, *Title 21: Licenses: Chapter 13: Massage Business*, 2000, http://www.cityoftulsa.org/text+only/general+information/ordinances/21_13.htm.

²⁰⁹ Wellness Education, *What to do if a person has had too much alcohol*, 2003, <http://www.uvsc.edu/wellnessed/toomuchalcohol.html>, Utah Valley State College.

²¹⁰ Wellness Education, *What to do if a person has had too much alcohol*, 2003, <http://www.uvsc.edu/wellnessed/toomuchalcohol.html>, Utah Valley State College.

²¹¹ Anonymous, *Policies: What you can expect as a client*, undated, <http://www.geocities.com/stephanieehret/Policies.html>.

²¹² Barbie Wong, *Barbie Wong, M.A.*, undated, <http://www.barbiewong.com/yoursession.html>.

It can be obvious that someone is on drugs. When other clients see this, they will not want any part of the clinic and will not return.

Chapter Summary

- Many clinics state in advance they will not treat persons who are intoxicated.

Chapter 41

“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.”

--NCBTMB Standards of Practice VI (a)

Sex and massage are two separate activities. Obviously they do not meet in the professional career of the massage therapist or bodyworker.

Pre-existing partner: If the therapist has a sexual partner, that partner cannot also be a client.

Client becoming partner: The massage situation can lower barriers and acquaint people quickly in a way which may be difficult to duplicate in present day society. **Therefore, it may be tempting to date a client. The Standards of Practice does not necessarily have a problem with this development as long as there is no sex.** If sex is desired, the new friend must cease to be a client and the two must wait at least six months. One author suggests that the AMTA Code of Ethics and NCBTMB Code of Ethics prohibit “romantic” (as opposed to sexual) involvement with clients²¹³ but this seems to be a more zealous interpretation than a strict of reading of both codes reveals.

The Australian Association of Somatic Psychotherapists also has a code of ethics with a no sex ban between therapist and client. It makes the point that the prohibition encompasses more than

²¹³ Dianne Polseno, *Boundaries ,Part II*, undated, <http://www.bancroftsmt.edu/boundaries.htm>.

intercourse. “The behavior of the Somatic Psychotherapist should not be sexually seductive or create ambiguity or confusion about sexual boundaries.”²¹⁴ It should be noted the NCBTMB Standard does not limit itself to intercourse either.

Does this preclude kissing? Licensed counselors (such as psychologists) have a code of ethics which prohibits sex between counselor and client.²¹⁵ This specifically says “passionate” kissing is out of bounds.²¹⁶ The NCBTMB does not spell the issue out.

This is not a pie in the sky issue. The NCBTMB disciplines therapists for violating this ethic.²¹⁷ One therapist was found to have gone awry on the six month waiting period. If she recertifies, she will be placed on probation for a year and required to take classes to prevent “sexual misconduct.” This action is public information available on the NCBTMB web site.

Chapter Summary

- Sex and massage are two separate activities. Obviously they do not meet in the professional career of the massage therapist or bodyworker.
- If sex is desired, the new friend must cease to be a client and the two must wait at least six months.

²¹⁴ Australian Association of Somatic Psychotherapists, *Code of Ethical Conduct of The Australian Association of Somatic Psychotherapists*, undated, <http://www.somaticpsych.org.au/ethics.htm>.

²¹⁵ Anonymous, *Dual Relationships, Unethical Intimacy, & Sexual Harassment*, undated, <http://www.cmhs.utoledo.edu/npiazza/Courses/Orientation/Dual.htm>.

²¹⁶ Anonymous, *Dual Relationships, Unethical Intimacy, & Sexual Harassment*, undated, <http://www.cmhs.utoledo.edu/npiazza/Courses/Orientation/Dual.htm>.

²¹⁷ National Certification Board for Therapeutic Massage and Bodywork, *Ethics and Standards*, 1999-2001, http://www.ncbtmb.com/ethics_&_standards.htm.

Chapter 42

“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.”

--NCBTMB Standards of Practice VI (b)

Making sexual suggestions may be the first step in initiating could be considered sexual behavior. If a client were to make sexual suggestions, simply changing the subject might be enough of an indication to get them to stop. However, this Standard requires the more direct approach, that of clarifying the purpose of the therapy. If the client persists, terminating the session or refusing the session would become a necessity. A good remedy for dealing with a potential problem is to simply open the door. It is doubtful the misbehaving client wants an audience.

The therapist must exercise extreme care if a client initiates sexual behavior not to speak ambiguously. This is not the time for dissembling or flirting. Distasteful as the subject is, it is common practice for police departments to send in undercover officers to test therapists and to see if they behave within the law. This is further reason why clients acting this way should be treated with decorum which is well and far away from anything questionable.

A hug or “peck on the cheek” between therapist and client is not unknown in the industry. Although the therapist and client may not have a social relationship outside of the therapeutic setting, a bond is formed over time. This is not technically prohibited under this Standard when the contact is non-sexual. However, the more medical settings would discourage this casualness.

Henry David Thoreau advocated simplicity in his masterpiece, *Walden*. A lady offered him a door mat but he thought he didn't have time to shake it out. "It is best to avoid the beginnings of evil," he wrote. The same could be said of becoming demonstrative.

In a case where the therapist is on the receiving end of an unconsented kiss or other contact, it may be sexual assault which is a crime.²¹⁸ Whether or not the therapist intends to contact the police, one attorney suggests writing everything about the incident down as soon as possible in case the therapist decides to act later.²¹⁹ Good judgment and common sense is all that is required in making such a decision.

Chapter Summary

- The therapist must exercise extreme care when the client attempts to initiate sexual behavior to speak unambiguously.

²¹⁸ Thomas Jellinek, *Sexual Assault Survivors*, undated, <http://sexualassault.aloak.ca/>.

²¹⁹ <http://sexualassault.aloak.ca/SAtodo.html>. Web site down. Additional help for victims of sexual assault is available by calling the National Domestic Violence Hotline 1-800-799-SAFE or 1-800-787-3224 (TDD) or the National Coalition Against Sexual Assault 717-728-9764.

Chapter 43

“recognize that sexual activity with clients, students, employees, supervisors, or trainees is prohibited even if consensual.”

--NCBTMB Standards of Practice VI ©

This Standard repeats the prohibition against sex between therapist and client and then extends it to persons beyond clients. The legal problem with sex between a therapist and students, employees, supervisors, or trainees is the possibility of being sued for sexual harassment.

Unwelcome romantic or sexual advances could create a hostile work environment²²⁰ if the behavior unreasonably interferes with an employee’s work performance or if the behavior negatively affects an employee’s psychological well being because the environment is intimidating, hostile or offensive.²²¹

The second type of harassment is more blatant. Here job benefits, continuation in the job or other employment decisions are based on the satisfaction of sexual demands.²²² Quid pro quo harassment is generally done by someone in authority, a supervisor or manager.²²³ If the employee agrees to the act, the coerced

²²⁰ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

²²¹ Findlaw for Legal Professional, *hostile environment sexual harassment*, 1994-2005, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=8d/8df28480586f125ddca105f86cd42563#hostile+environment+sexual+harassment>.

²²² Findlaw for Legal Professional, *hostile environment sexual harassment*, 1994-2005, <http://dictionary.lp.findlaw.com/scripts/results.pl?co=dictionary.lp.findlaw.com&topic=8d/8df28480586f125ddca105f86cd42563#hostile+environment+sexual+harassment>.

²²³ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

consent may not relieve the employer of liability.²²⁴ The harassment can be implied—a discussion of workplace issues followed by an improper request was held to be quid pro quo harassment.²²⁵ The harassment need not come before the request. An employee spurned a request and was later discharged for calling in sick; this was held to be harassment.²²⁶ No negative job consequence, such as being demoted or fired, is required for the employee to bring an action—simply the act of being asked and having refused is sufficient.²²⁷

In either case, the employer is ultimately liable for what happens on the job.²²⁸

The federal statute applies to employers with 15 or more employees; state law may differ.²²⁹ Links to the state laws are available at <http://www.de.psu.edu/harassment/legal/state.html>.

This Standard goes one step beyond the law, however, and prohibits sexual activity between these people *even if* everyone involved consents to the acts. The Board apparently felt the power disparities in these relationships (teacher/student, employer/employee) made any consent so ambiguous that they opted out of the whole situation, protecting the reputation of therapist and industry.

Does the prohibition last after the status ends? Clearly, as regards to clients, NCBTMB Standards of Practice VI (a) governs and the status (of being a client) must end and the couple must wait

²²⁴ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

²²⁵ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

²²⁶ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

²²⁷ Anonymous, *White Paper*, undated, <http://www.end-harassment.com/whitepaper.htm>.

²²⁸ Rawles, O’Byrne, Stanko & Kepley, P.C., *U.S. Supreme Court Clarifies Federal Sexual Harassment Law*, undated, <http://www.rosklaw.com/harass.html>.

²²⁹ Free Advice, *What Types of Conduct Have Been Found to Be “Sexual Harassment”?*, undated, http://employment-law.freeadvice.com/sexual_harassment/types_harassment.htm.

six months. The Standards do not mention a waiting period for the other relationships. It is therefore possible that a student who had graduated could enter into sexual activity with a former teacher who is also a therapist. The student could not also be a client or the more restrictive waiting period would apply.

Chapter Summary

- This Standard repeats the prohibition against sex between therapist and client and then extends it to persons beyond clients.
- This Standard prohibits sexual activity between these people *even if* everyone involved consents to the acts.

Chapter 44

“do not touch the genitalia.”

--NCBTMB Standards of Practice VI (d)

The Standards define genitalia as (female) labia majora, labia minora, clitoris, vaginal orifice, and (male) testes, penis, and scrotum.²³⁰ Licensing jurisdictions probably require the covering of these areas with draping.²³¹ They may revoke licenses and impose criminal sanctions for touching the area.²³²

The most common form of massage was invented by a Swede, Per Heinrick Ling, in the early 1800s.²³³ Unsurprisingly, it is known as Swedish massage and was designed to exclude the area under discussion.²³⁴

Client consent is of no avail here.

“Research and consumer surveys leave no doubt that massage is now thought of first and primarily as a legitimate, legal, and honorable profession,” writes Linda Diane Feldt, past president of the American Polarity Therapy Association.²³⁵ That reputation is burnished—or tarnished—by the actions of every therapist. Every therapist is a representative of the massage and bodywork industry.

²³⁰ NCBTMB, “Appendix 7: Standards of Practice: Glossary of Terms Used in This Document,” p. 25, undated, *Approved Provider Application for Continuing Education*.

²³¹ Anonymous, *FAQ*, undated, <http://www.massagechicago.com/page4.html>.

²³² Alabama Board of Massage Therapy, *Disciplinary Action*, undated, <http://www.almtbd.state.al.us/discaction.htm>.

²³³ Healthy Elementz, *Swedish Massage*, undated, <http://www.healthyelementz.com/www/swedish.html>.

²³⁴ Healthy Elementz, *Swedish Massage*, undated, <http://www.healthyelementz.com/www/swedish.html>.

²³⁵ Linda Diane Feldt, *Regulation of Touch Therapies is Not an Easy Thing*, 2002, <http://www.a2altmed.com/ArticlesFull.asp?article=Feldt1>, Ann Arbor Alternative Medicine.

Chapter Summary

- Client consent is of no avail here with regard to touching genitalia.
- That reputation of the industry is burnished—or tarnished—by the actions of every therapist.

Chapter 45

“only perform therapeutic treatments beyond the normal narrowing of the ear canal and normal narrowing of the nasal passages as indicated in the plan of care and only after receiving informed voluntary written consent.”

--NCBTMB Standards of Practice VI (e)

Ear candling does not appear to implicate this Standard.²³⁶ On the other hand, it is claimed ear wax will condense onto the candle.²³⁷ This Standard should be kept in mind if the candling penetrates “beyond the normal narrowing of the ear canal.”

Care should be taken when working around the ears that oil or other medium, (even a trace amount) does not accidentally enter the ear canal. It can cause dizziness and possibly ear infection.

There is a nasya technique of putting five drops of an oil combination into the nose.²³⁸ A literal reading of the Standard would indicate that if a massage therapist performed this procedure, written consent would be indicated, although the therapist’s fingers never touched the nose.

If the therapist is working for a medical professional who suggests the therapist massages this area, the therapist needs proper training. Such practice may be outside the scope of the massage license and of the therapist’s insurance. Working with the ears and nose is a cause of particular concern since it is easy to create serious injury. Likewise, putting hard objects, even Q-tips, in the

²³⁶ Harmony Bodyworks, *Ear Coning*, 2002, <http://www.harmonybodyworks.net/earcone.html>.

²³⁷ Harmony Bodyworks, *Ear Coning*, 2002, <http://www.harmonybodyworks.net/earcone.html>.

²³⁸ Healing Hands, *Nasal Therapy (Nasya)*, undated, <http://www.tridosha.com/nasal.cfm?type=full>, Panchakarma Ayurveda, *Nasya*, undated, <http://www.panchakarmayurveda.com/Nasya.html>.

ear canal has been known to cause earache and infection which can also lead to perforation of the ear drum.

Chapter Summary

- Working with the ears and nose is a cause of particular concern since it is easy to create serious injury.

Chapter 46

“only perform therapeutic treatments in the oropharynx as indicated in the plan of care and only after receiving informed voluntary consent.”

--NCBTMB Standards of Practice VI (f)

The oropharynx is the “part of the pharynx between the soft palate and the epiglottis.”²³⁹ This, then, is in the middle part of the throat.²⁴⁰ The NCBTMB’s comments on this Standard are vague.²⁴¹ They state that some modalities utilize the area but that “it is possible that some certificants may inappropriately work these areas under the guise of doing “therapeutic” work.”²⁴² The required consent appears to be designed to discourage therapists from working in this area.²⁴³

Chapter Summary

- Proper training, certification and/or licensing is needed to do therapy beyond the scope of practice.

²³⁹ Dictionary.com, *oropharynx*, 2005, <http://dictionary.reference.com/search?r=2&q=oropharynx>.

²⁴⁰ Anonymous, *Definitions Found*, undated, <http://411cancer.com/dictionary/win2.php>.

²⁴¹ NCBTMB, *NCB Infoline*, December 2000, <http://www.ncbtmb.com/Newsletter/infoline/december2000.htm>.

²⁴² NCBTMB, *NCB Infoline*, December 2000, <http://www.ncbtmb.com/Newsletter/infoline/december2000.htm>.

²⁴³ NCBTMB, *NCB Infoline*, December 2000, <http://www.ncbtmb.com/Newsletter/infoline/december2000.htm>.

Chapter 47

“only perform therapeutic treatments into the anal canal as indicated in the plan of care and only after receiving informed voluntary written consent.”

--NCBTMB Standards of Practice VI (g)

Massage therapists do not perform treatments near the anus. To do so is illegal in many jurisdictions. Furthermore, going anywhere near the area would impair proper draping. There is no training to date that covers this in the conventional massage and bodywork field.

Other activities in this area, such as colonic therapy, require separate training, certification and/or licensing.

Chapter Summary

- Performing colonic therapy require separate training, certification and/or licensing.
- Although the Standard permits massaging of the anus with written consent, the practice may be illegal in most jurisdictions.

Chapter 48

“only provide therapeutic breast massage as indicated in the plan of care and only after receiving informed voluntary consent from the client.”

--NCBTMB Standards of Practice VI (h)

The breasts are an eroticized part of the body in the modern American culture.²⁴⁴ This raises additional privacy concerns to which this Standard replies by requiring specific consent to massage this area.

The male therapist massaging a female client would be well advised to get that consent in writing. The therapist in this situation should be alert to the possibility the client revokes the consent, which should immediately end this segment of the massage. If the therapist has consent but the client indicates uncertainty or discomfort, the therapist ought to decline that part of the massage. The male therapist should be careful to make no comment about this part of the anatomy; even if meant well, it is bound to come out wrong and to sound unprofessional. Some therapists simply do not offer female breast massage.²⁴⁵

Some states may require that the consent for breast massage be in writing regardless of the therapist's gender (Arizona²⁴⁶, Texas²⁴⁷ and Utah²⁴⁸ are examples.)

²⁴⁴ Debra Curties, *Breast Wellness—Massage Deserves Attention*, 1999-2000, <http://www.salonchannel.com/articles/breast.htm>.

²⁴⁵ Hands on Healing Massage Therapy, *Pricing/Policies*, undated, <http://www.hohmassage.com/pricing.htm>, Charter Health Center, *Common Questions*, 2003, <http://www.chartermassage.org/healthcenter/questions.html>, Point of Origin, *Frequently Asked Questions*, undated, <http://www.pointoforigintherapies.com/faq.html>.

²⁴⁶ Arizona State Legislature, *Disciplinary action; grounds; definitions*, undated, <http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/32/04253.htm&Title=32&DocType=ARS>.

There are contraindications to massaging the breast. Infection may indicate the breast should not be massaged even if the client consents.²⁴⁹ An undiagnosed lump or abscess indicates that particular area should be left alone.²⁵⁰ A therapist should only massage the breasts of a client with breast cancer only after training and only with permission from the client's doctor.²⁵¹ Some opinion believes separate training should be secured before doing any breast massage. Breast massage may be illegal in some jurisdictions.²⁵²

A sampling of U.S. therapists in 1997 found that only 9% practiced breast massage and that only 10% of schools taught it.²⁵³ One teacher was banned from teaching in North Carolina for offering a course on the technique.²⁵⁴ Breast massage is more common in Canada.²⁵⁵

Chapter Summary

- Some states may require that the consent for breast massage be in writing.

²⁴⁷ Texas Department of State Health Services, *Massage Therapy*, 2005,

<http://www.tdh.state.tx.us/hcqs/plc/massage.htm>.

²⁴⁸ Utah, *Massage Therapy Practice Act*, 2001, http://www.dopl.utah.gov/licensing/statutes_and_rules/58-47b.doc.

²⁴⁹ http://www.essentialolutions.com/breast_message_benefits.html. Web site down.

²⁵⁰ http://www.essentialolutions.com/breast_message_benefits.html. Web site down.

²⁵¹ http://www.essentialolutions.com/breast_message_benefits.html. Web site down.

²⁵² Kate Jordan, *The Evolving Practice of Breast Massage*, 2004, <http://www.massagetoday.com/columnists/jordan/>.

²⁵³ Kate Jordan, *The Evolving Practice of Breast Massage*, 2004, <http://www.massagetoday.com/columnists/jordan/>.

²⁵⁴ Kate Jordan, *The Evolving Practice of Breast Massage*, 2004, <http://www.massagetoday.com/columnists/jordan/>.

²⁵⁵ Jessica Johnson, *Well-Being and Breast-Care*, 2003, <http://www.evalua8.org/staticpage?page=review&siteid=4205>, *The Globe and Mail*. This article reports Deborah Curties has written a book on the technique, *Breast Massage*. It is not, however, listed at the bookseller Amazon.com.

Chapter 49

AIDS and the Massage Therapist

The Code of Ethics and Standards of Practice do not address the ethical obligation, if any, for a therapist to treat a client with a communicable disease such as AIDS.

The human immunodeficiency virus (HIV) causes AIDS²⁵⁶ (acquired immunodeficiency syndrome). HIV, discovered in 1983, two years after AIDS, destroys CD4+T cells, progressively damaging the body's immune system until defenses are so lowered that AIDS can develop.²⁵⁷ 75% to 83% of the CD4+T cells have been eliminated at that point.²⁵⁸ HIV is thought to have entered the United States in the late 1970s, several years before its existence was realized.²⁵⁹ Between 1981 and 2002, 886,483 people were diagnosed with AIDS in the United States.²⁶⁰ 501,640 deaths from AIDS were reported during the same period. The high mortality rate for AIDS has been moderated by modern drug therapies, allowing patients with AIDS to live longer.²⁶¹

HIV is transmitted primarily by sexual contact, sharing needles or syringes, and infected blood.²⁶² HIV can be present in saliva or tears; it is not found in sweat—none of these three liquids has been shown to transmit the virus.²⁶³

²⁵⁶ <http://www.cdc.gov/hiv/hivinfo/overview.htm>. Web site down.

²⁵⁷ National Institute of Allergy and Infectious Diseases / National Institutes of Health, *Focus On The HIV-AIDS Connection*, 2004, <http://www2.niaid.nih.gov/newsroom/focuson/hiv00/default.htm>.

²⁵⁸ National Institute of Allergy and Infectious Diseases / National Institutes of Health, *Focus On The HIV-AIDS Connection*, 2004, <http://www2.niaid.nih.gov/newsroom/focuson/hiv00/default.htm>.

²⁵⁹ National Institute of Allergy and Infectious Diseases / National Institutes of Health *How HIV Causes AIDS*, 2004, <http://www.niaid.nih.gov/factsheets/howhiv.htm>.

²⁶⁰ Avert.org, *United States HIV and AIDS Statistics By Year*, 2004, <http://www.avert.org/usastaty.htm>.

²⁶¹ Avert.org, *United States HIV and AIDS Statistics By Year*, 2004, <http://www.avert.org/usastaty.htm>.

²⁶² National Center for HIV, STD and TB Prevention / Divisions of HIV/AIDS Prevention, *HIV and its Transmission*, 2003, <http://www.cdc.gov/hiv/pubs/facts/transmission.htm>.

²⁶³ National Center for HIV, STD and TB Prevention / Divisions of HIV/AIDS Prevention, *HIV and its Transmission*, 2003, <http://www.cdc.gov/hiv/pubs/facts/transmission.htm>.

As of September 2003 the US Centers for Disease Control (CDC) had no evidence that a client had ever infected a therapist.²⁶⁴ Nonetheless, the CDC issued guidelines in 1985 to discourage contact between skin or mucous membranes and infected blood. Gloves should be worn if contact with infected blood is possible. Cuts, sores or breaks on either the therapist or client should be covered with bandages. Hands or surfaces which come into contact with infected blood should be washed and disinfected.²⁶⁵

Massage is used to reduce the pain and stress of the disease.²⁶⁶

The law may prohibit a therapist's refusal to treat a patient with AIDS.²⁶⁷ Standard II (a) of the Standards of Practice require the therapist to "obey all applicable local, state and federal laws." If the therapist is in a jurisdiction with a law requiring treatment of AIDS patients, then the therapist has an ethical duty to do so.

In 1998 the United States Supreme Court held that a dentist violated the Americans With Disabilities Act (ADA) when he refused to treat a person who was HIV positive.²⁶⁸ This may suggest an ethical obligation under federal law for a therapist to treat. However, a Nebraska employer is using the same ADA to defend against firing an HIV-positive employee, claiming the employee posed a direct threat to other employees and

²⁶⁴ National Center for HIV, STD and TB Prevention / Divisions of HIV/AIDS Prevention, *HIV and its Transmission*, 2003, <http://www.cdc.gov/hiv/pubs/facts/transmission.htm>.

²⁶⁵ National Center for HIV, STD and TB Prevention / Divisions of HIV/AIDS Prevention, *HIV and its Transmission*, 2003, <http://www.cdc.gov/hiv/pubs/facts/transmission.htm>.

²⁶⁶ Centers for Disease Control and Prevention, *Fact Sheet: HIV/AIDS and Alternative Therapies*, 1994, http://www.aegis.com/pubs/cdc_fact_sheets/1994/cdc94033.html.

²⁶⁷ The Massage and Bodywork Resource Center, *Law and Ethics*, 1999, http://www.massageresource.com/ubbcbgi/ultimatebb.cgi?ubb=get_topic&f=3&t=000003. Florida requires therapists to take an AIDS course (<http://www.aidscourse.com/>).

²⁶⁸ Christopher Seely, *HIV discrimination looms large in U.S.*, 2003, <http://www.sovo.com/2003/11-28/news/national/hivdis.cfm>, Southernvoice.com.

customers.²⁶⁹

It is reported that 16% of Canadian dentists have refused to treat patients with AIDS.²⁷⁰

There is special training available for those therapists who wish to work on AIDS patients.

Chapter Summary

- The CDC issued guidelines in 1985 to discourage contact between skin or mucous membranes and infected blood.
- The therapist may be required by law to treat a patient with AIDS

²⁶⁹ Christopher Seely, *HIV discrimination looms large in U.S.*, 2003, <http://www.sovo.com/2003/11-28/news/national/hivdis.cfm>, Southernvoice.com.

²⁷⁰ <http://www.leneb.com/arr/day31thruend.html>. Web page down.

Chapter 50

Personal Protection

Under certain conditions a therapist's safety may be at risk. They may be operating a solo clinic. In any case they will be alone with a client or if there is no client, then possibly alone in the clinic. For example, San Bernardino, California deputies were looking for a man who attacked several workers in massage clinics between 2003 and 2004.²⁷¹ There is a larger risk in being attacked by someone known to the victim²⁷² Nonetheless, risk remains in dealing with strangers. The reason for this may be because the attacker thinks there is cash and only one or two people on the premises.

Self-defense skills may be learned in a class. The National Coalition Against Sexual Assault recommends a class has the following characteristics: "A good course covers critical thinking about defense strategies, assertiveness, powerful communication skills, and easy to remember physical techniques. The instructor respects and responds to your fears and concerns. Instruction is based on the belief that we can act competently, decisively, and take action for our own protection. Essentially, a good course is based on intelligence and not muscle. It offers tools for enabling a person to connect with their own strength and power."²⁷³

Another choice in self-defense is a spray, such as pepper spray or Mace. Pepper spray, targeted to the assailant's eyes, will

²⁷¹ Riverside *Press-Telegram*, May 22, 2004. The department did not respond to an e-mail inquiring as to the status of this case.

²⁷² Laura Ann Kamienski, *Women's self-defense*, undated, <http://www.kicks4women.com/thesis.shtml>.

²⁷³ Laura Ann Kamienski, *Women's self-defense*, undated, <http://www.kicks4women.com/thesis.shtml>.

lessen vision.²⁷⁴ Check the law—these agents may be illegal or may require training/licensing in the therapist’s area.²⁷⁵

How much force is one allowed to use to stop an attack? Generally, in the criminal law, one can use the same force one is being attacked with.²⁷⁶ One cannot use deadly force if the assailant is not using deadly force. The therapist need not wait for the actual attack to occur to defend but the threat of attack must be immediate.²⁷⁷ The danger here is the therapist does not want to be seen as the aggressor, thus with no right to self defense.²⁷⁸ Words are not generally enough to make self defense possible.²⁷⁹ The attacker must do something more than talk. If the attacker threatens and picks up a stone, which would probably be enough to initiate self defense. A minority of jurisdictions require the defender to retreat if this can be done safely; retreat is not required if the defender is being raped.²⁸⁰

If a therapist sees another therapist being attacked, the first therapist can defend the second if the first has a reasonable belief the second is in need of assistance.²⁸¹

If the attacker withdraws, the right of self-defense ends.²⁸² Once the attacker has been stopped, the therapist must end self

²⁷⁴ Johnson Enterprises, *Pepper Spray, Tear Gas, Mace and The Law*, undated, http://www.peppersprayinc.com/pepper_spray%2C_tear_gas%2C_mace_and_the_law.htm.

²⁷⁵ Johnson Enterprises, *Pepper Spray, Tear Gas, Mace and The Law*, undated, http://www.peppersprayinc.com/pepper_spray%2C_tear_gas%2C_mace_and_the_law.htm.

²⁷⁶ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁷⁷ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁷⁸ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁷⁹ TKD Tutor, *Laws of Self-Defense, 2000-2004*, <http://www.tkdutor.com/07Defense/Laws.htm>.

²⁸⁰ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸¹ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸² Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

defense efforts; retaliation is not included in the right to self defense.²⁸³

Additionally, there are civil concerns. (A civil matter is one where individual parties sue each other, as opposed to the state prosecuting someone which is a criminal matter.) The tort of assault and battery may be involved. If the attacker causes harmful or offensive contact against the therapist's person, the attacker has committed a battery.²⁸⁴ If the attacker puts the therapist in fear of an imminent battery, an assault has been committed.²⁸⁵ These often occur together—threat and contact resulting in assault and battery. The therapist can sue the attacker in these circumstances. If the therapist, in defending, injures the attacker and is then sued, the therapist can assert self defense as a justification. If a third party helps the defending therapist, the third party is protected from suit if the therapist actually had a right to self defense.²⁸⁶ If the third party got in on the wrong side of the fight and the therapist actually did not have the right to self defense, the third party can be sued (although there is a trend in the courts to protect the third party if the mistake in assisting was reasonable.)²⁸⁷

If a thief steals something and runs, the therapist may give chase and use minimal force to recover the property.²⁸⁸ In this circumstance, the therapist cannot cause serious injury.²⁸⁹ If the thief turns around and attacks, the rules of self defense apply.²⁹⁰

²⁸³ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸⁴ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸⁵ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸⁶ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸⁷ Peter Hobart, *Self Defense Law and the Martial Artist*, undated, <http://www.ittendojo.org/articles/general-4.htm>.

²⁸⁸ TKD Tutor, *Laws of Self-Defense*, 2000-2004, <http://www.tkdutor.com/07Defense/Laws.htm>.

²⁸⁹ TKD Tutor, *Laws of Self-Defense*, 2000-2004, <http://www.tkdutor.com/07Defense/Laws.htm>.

²⁹⁰ TKD Tutor, *Laws of Self-Defense*, 2000-2004, <http://www.tkdutor.com/07Defense/Laws.htm>.

That said, some of the best things a solo therapist can do is find the safest area to work in as possible. Avoid being on the premises into the late evening or taking new clients in the evening. Have a good alarm system with a one touch police button. Be aware of the surroundings at all times. Rehearse plans for all possible scenarios of danger.

Chapter Summary

- Generally, one can use the same force one is being attacked with.
- If a thief steals something and runs, the therapist may give chase and use minimal force to recover the property.
- Find the safest area to work in as possible.

Chapter 51

The Final Chapter

We hope we made your class an educational and entertaining one. Thank you for using us to meet your continuing education needs. We hope you'll consider us in the future also. Your feedback on this class is always welcome.

Best of good fortune to you,

Shirley

Apollo Correspondence Classes
21162 Banff Lane
Huntington Beach, CA 92646

go@apollo123.com

<http://apollo123.com>

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**Test Questions
Chapters 1 through 25**

Easiest way – take the test online at

<http://mansfieldfc.com/massage/1/moreethics/autotest.html>

1. When dealing with any client, it is best to...
 - a. be on guard in case they turn out to be a jerk.
 - b. treat them with dignity and respect.
 - c. make them sign a waiver.
 - d. none of the above.

2. The following is an example of professional non-verbal communications...
 - a. a willingness to listen closely and properly advise the client.
 - b. sharing the woes of the day and keeping client records up to date.
 - c. updating client records with employer.
 - d. proper clothing, a calm and sincere demeanor.

3. Protect the health and safety of the client by...
 - a. making sure they have all their inoculations for disease.
 - b. make sure they have had a physical at least 6 months before treatment.
 - c. forget it. Health and safety is textbook and doesn't happen in the real world.

--d. following all health and safety codes.

4. Cross contamination refers to...

--a. entering client information into the wrong chart.

--b. germs spread from one person to another due to lack of sanitary precautions.

--c. when a client libels a therapist affecting future business.

--d. when another entity meant to be ancillary begins acquiring the bulk of a therapist business.

5. The required clothing for the massage/bodywork therapist is...

--a. hospital approved medical uniform.

--b. anything as long as it is white.

--c. clean comfortable clothing in good repair.

--d. the same monotonous uniform every day.

6. In terms of the client, a “needs assessment” and “plan of care” is...

--a. a list of all the department stores you registered with, which is given to the client at Christmas time.

--b. is an assessment of the condition of the client and plan for treatment.

--c. a poll taken from the clients to determine what new massage classes to take.

--d. a form from Lighthouse Health Insurance, that you better fill out if you want to get paid.

7. Making a false statement about someone to a third party is...

--a. no big deal, people in the health industry do it all the time.

--b. slander

- c. okay as long as you add “ I heard it through the grapevine.”
- d. permissible as long as you did not put it in writing.

8. Using the NCBTMB logo...

- a. demonstrates the therapist has passed certain standards of professional ability.
- b. is a blanket that covers all the other therapists in the establishment.
- c. is permissible only in certain states.
- d. okay, as long as you have test date for the National exam.

9. In your ads, you can mention the name of one of your celebrity clients if...

- a. you want to look “cool” and draw in lots of business.
- b. you only say nice things about them.
- c. if your employer says it’s okay.
- d. the celebrity gives you permission to do so.

10. Treating a client who is obviously intoxicated may result in...

- a. the client legally attempting to make void your fee.
- b. a contact high, and eventual alcoholism.
- c. your being able to short them on their time; since they won’t know the difference.
- d. your having to drive them home because the dumpster is full.

11. The client health questionnaire should contain relevant information such as...

- a. how they really feel about their spouse.
- b. their gross income and after tax income.
- c. where it hurts.

--d. the ages of their children

12. Protecting client's records is necessary because:

--a. it is the responsibility of the therapist, required by the NCBTMB and may be required by the licensing agency.

--b. you want to copy the phone numbers for when you get your own place.

--c. you can't remember one darn thing about them.

--d. it is required by the FCC.

13. To present your self as having qualifications you do not have is....

--a. permissible, as long as you put nothing in writing.

--b. harmless, if your only going to do what you were trained for anyway.

--c. is an ethical violation.

--d. accepted common practice in the industry.

Test Questions Chapters 26 through 50

14. If a client becomes addicted to massage to the detriment of their finances...

--a. be sure to run their credit card before starting treatment.

--b. spacing their appointments further apart is a professional ethic.

--c. hey, all the better.

--d. check their credit rating then start them on a running tab.

15. Advertise...

--a. only what is being offered.

- b. anything and everything, just to get them in the door.
- c. on late night radio because insomniacs make the best clients.
- d. in sexually provocative magazines

16. It may be considered sexual harassment if...

- a. a client asks you out on a date.
- b. your employer tells you a knock knock joke.
- c. your employer secretly keeps a *Playboy* (or *Playgirl*) magazine in their locked briefcase.
- d. your employer tells you a dirty knock knock joke.

17. Selling products...

- a. is fine as long as the product has value for the client and does not stray too far from the health field.
- b. is what it's all about.
- c. should be done after the treatment while the client still has their purse or wallet out.
- d. is forbidden by law.

18. One of the definitions of an independent contractor is...

- a. they set your own hours.
- b. the boss sets their hours.
- c. the receptionist signs up all their appointments and they have no say in the matter.
- d. the owner provides all the supplies.

19. If the therapist needs to take personal time off they should...

- a. do so only after deep soul searching and chanting; because the client is their first priority.
- b. do so only in case of dire illness or co-dependency meetings

--c. do so; because the massage and bodywork field can be casual and flexibility.

--d. forget about it.

20. The only time it is okay for a therapist to behave sexually is...

--a. when there exists a sincere attraction on the part of both the therapist and the client.

--b. if it is proceeded by dinner and a movie.

--c. when the target is not a client for six months.

--d. when their employer approves

21. Getting permission from the client to perform treatment should occur...

--a. before treatment has begun.

--b. only if the establishment could be mistaken for a Dairy Queen.

--c. after you've gotten to know them better.

--d. several times during the session in case the client is lulled into forgetting.

22. If the client wants to terminate the treatment...

--a. hide one of their articles of clothing...it drives them nuts.

--b. get the manager...the two of you can talk them out of leaving

--c. terminate the treatment immediately, and step away from the table.

--d. 4. it's because they're an idiot.

23. Cannabis use...

--a. is your business as long as you light up in the restroom away from the clients.

--b. transports the session into another realm.

- c. impairs motor function and may lead to social withdrawal.
- d. is in line with massage and makes an excellent up sell item.

24. If a therapist wants to date a client they must...

- a. learn to dress sexier.
- b. they must refrain from sex.
- c. read the *Kama Sutra*.
- d. do it on the sly.

25. Unwelcome romantic or sexual advances...

- a. could create a hostile work environment according to the law.
- b. are all part of the job.
- c. are okay as long as you are the advancer.
- d. have to be a written part of an agreement to be valid.

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