

<https://www.amtamassage.org/articles/3/MTJ/detail/3413/avoiding-legal-pitfalls-in-your-massage-practice>

Whether you're a small-businessowner or sole proprietor, there are a variety of legal issues you need to think about when starting and maintaining your massage therapy practice. The following are some of the most important legal matters every massage therapist should consider.

Contracts: Dot Your i's and Cross Your t's

Virtually everything you do involves a contract. Here are just a few examples:

- Purchasing services, such as website development and Internet service
- Renting the space where you work
- Employing other massage therapists
- Providing massage therapy services

Whenever you enter into a contract, keep these imperatives top of mind:

Get it in writing

You may be friendly with the other party to the contract, but you need to separate the personal from the professional. "If you go into business with a childhood friend, a handshake deal may seem safe enough," says Rachel Rodgers, principal attorney at Rodgers Collective, P. C., in Tenafly, New Jersey. "But what do you do if the friend starts missing payments?" Without a written contract, it's much harder to collect, even on a small claim.

Top Tip: Make sure you have a written contract for every business agreement you enter into, including a service agreement for your clients.

Don't just copy a form

Kathy van Every, principal of the Law Offices of Kathy van Every, PLLC, McKinney, Texas, notes that many small-business professionals don't

pay enough attention to their contracts. “They download a form or copy it from a book and think they’re covered. That’s a document, not a solution,” she says. Relying on a form can result in misalignment with business objectives or worse. Van Every cites the example of a client who had farmed out the design of a logo without even executing a contract. “Without a contract that specifies the logo was a ‘work made for hire,’” she explains, “the copyright belongs to the maker of the logo. So the businessperson couldn’t trademark his own logo.”

This caution also applies to the many forms massage therapists use in the course of business, such as intake forms, SOAP notes and client service agreements. Lauren Turner, an attorney with Rodgers Collective P. C., observes that a client service agreement should include provisions covering payments and how they are made, missed appointments, refunds, disclaimers about what the massage therapists can and cannot do, as well as the goals of a massage therapy session.

Be aware, too, that forms can raise legal issues. For example, any form that records information that a client provided to you must be held in confidence.

Top Tip: With your lawyer, determine who you need contracts with, and customize and review them together. That includes suppliers, employees and clients. Be ready to negotiate to tailor the agreement to your specific business conditions, and don’t sign before you understand what you are committing to. Conduct a similar review of all the forms you use in the course of your business.

Top Tip: Review your compliance requirements with your attorney. Are you subject to HIPAA? Does your state licensing board or any other regulatory body impose its own requirements?

Choose the Right Entity for Your Business

You may not have thought about doing business in any form other than as a sole proprietor, but you should: The right business form can pare down your tax burden and insulate you from personal liability.

- An individual can do business as a corporation, operating as a shareholder. The big advantage is that a corporation is a separate business entity from its shareholders, so they are not liable for acts committed by the business, or for its debts. The

disadvantage is that the shareholder's income comes in the form of taxable corporate dividends, which results in double taxation because the corporation's profits are taxed, too.

- To get around this drawback, limited liability companies (LLCs) were devised. Their advantage is that the corporation does not pay taxes; profits and losses are passed through to the shareholders and taxed only once. One big disadvantage is that the LLC owner must pay self-employment tax (currently 15.3 percent) on the LLC's entire income.
- For this reason, Rodgers strongly recommends that small-business owners do business as what's known as a Subchapter S corporation (after the Internal Revenue Code provision that created it). The advantage of an S corp over an LLC is that self-employment tax only applies to the salary that the S corp's owner takes, rather than the entire income of the business.

Top Tip: "Operating agreements for a corporation are also contracts," van Every cautions, so here, too, you need to take the time to do it right. Don't just download a form. Rather, tailor the agreements to your needs with your lawyer. And be aware that you'll have administrative duties: bylaws under which you conduct business and annual meetings (even if you are the only shareholder), for example.

Employment Issues

If you employ other massage therapists, be sure you understand state and federal employment laws. Some of the most significant issues include:

- State and federal laws: Each state has its own requirements regarding workers, and federal regulations may come into play, such as those overseen by the Occupational Safety and Health Administration (OSHA).
- Harassment and discrimination: These issues can be nuanced, so be sure you fully understand what's expected of you as an employer when you consider hiring.

Related: [Massage Employer Best Practices](#)

Top Tip: Employee relations are like contracts: No matter how friendly the parties are, their obligations should be set out in writing. Thus, you would do well to consult with your lawyer to draft an employee handbook that sets out the mutual expectations of you and your workers. It may not cover every eventuality that might arise and probably will not be binding, but as van Every says, something is always better than nothing.

Build Your Brand and Defend Your Intellectual Property

“Intellectual property” is a lawyer’s term, but it means something that’s crucial for your business to protect—now more than ever in the age of the Internet. Here are the top issues you need to consider:

Trademarks

A trademark is basically a distinctive symbol (logo), such as the Nike swoosh, or a word or phrase, such as “Just Do It,” that is used to distinguish a business’s goods or services.¹ Your business name is a trademark, for example. A trademark can be registered with the U.S. Patent and Trademark Office. The benefits of doing so include nationwide recognition, access to the federal courts to litigate infringement claims and remedies that include confiscation at customs, among others.

Copyright

Copyright applies to anything “fixed in a tangible medium of expression,” which for our purposes means written down or recorded so as to be reproducible.²

Patents

A patent is a monopoly granted by the federal government for a limited time (currently, 20 years from application) to allow the inventor of a device the exclusive benefit of his or her intellectual labor. To be patentable, the device must be a “new and useful process, machine, manufacture, or composition of matter” or “improvement thereof,” as judged by the U.S. Patent Office.³

Trade secrets

The U.S. Code defines a trade secret as information whose owner makes a reasonable effort to keep secret and derives economic value from its secrecy. The standard example is the formula for Coca-Cola, which is rigorously guarded because the company would likely collapse if it were disclosed.⁴

Protect your trademarks. They are your most precious intellectual property because they play the biggest role in building your brand. Your lawyer should conduct a trademark search to be sure that you are not infringing on an existing trademark, which could mean making big adjustments to your practice. As Rodgers says: “If you have to change your business name, you need to revamp your whole brand, changing your website, the name on your product and even your letterhead.”

Be mindful of your copyrights. You have copyrightable material, whether you realize it or not: the copy for your website and any other promotional materials

you produce, for one example. Take special care to protect against Internet piracy.

Protecting massage techniques you develop can be a little less clear-cut, but can be useful when looking at ways to develop commercial potential while also safeguarding your idea. Turner suggests that for a device or massage therapy product, it's possible but not likely that you could get a patent. Further, a patent for a technique would be tricky to obtain—and may not be the best form of protection.

- A manual, video or podcast related to the technique could be copyrighted, but not the technique itself.
- Additionally, securing protection as a trade secret requires keeping the innovation confidential, so that's out, too.
- Finally, the innovation by itself could not be trademarked, but if you do keep it confidential and make it a strong part of your brand, especially if you register the trademark of which the innovation is a part, you should have some protection.

Massage therapists rightfully focus on what they are in business to do: provide massage and educate their clients on the many benefits of massage therapy. When you are a small-business owner or sole practitioner, however, spend time to make sure you understand the myriad legal issues that can help make—or break—your practice.

<https://fitness.edu.au/the-fitness-zone/article/responsibilities-of-a-massage-therapist/>

There's more to being a Massage Therapist than understanding techniques and how to help your clients. While it's excellent that you have your qualifications and relevant experience, there are also ethics and responsibilities you need to abide by to not only ensure you are doing everything safely and legally, but also to ensure your clients receive the best possible service. That is, after all, how you get repeat business.

ETHICS ARE CRUCIAL FOR MASSAGE THERAPISTS

The Association of Massage Therapists seeks to establish massage therapy as an allied health profession in Australia. The values of the AMT reflect those that

every massage therapist should seek to honour – best practice, connection with the community, innovation, governance and a focus on clients.

The Code of Ethics was developed to ensure members are supported and that the industry is held to the highest standards. They also keep members in line and ensure the public and other health professionals have an understanding of the industry. Standards of practice include caring for the health and wellbeing of clients, respecting the privacy of clients and maintaining professional boundaries, and protecting privacy.

Simply speaking, the Standards ensure that practitioners understand and meet their professional duty of care. Additionally, there are certain conditions that therapists need to commit to, including formulating their own risk management framework.

Importantly, the Standards provide a benchmark against which complaints can be assessed and inform criminal or civil investigations. What this essentially means is that massage therapists have something to be held against if things go awry and the power is squarely in the hands of the public when it comes to determining the quality of care.

This is especially important for therapists and the public as [massage therapy is currently self-regulated](#) in Australia. While there are several statutory codes and legislative instruments that therapists can be liable against, the Standards provide an open platform for therapists and the public alike.

IMPORTANCE OF EDUCATION

The Standards also detail the educational pathways that massage therapists must take to qualify in their field. As such, there are Registered Training Organisations, regulated by the government, which provide nationally recognised qualifications at Certificate IV, Diploma and Advanced Diploma levels.

In accordance with the Standards, massage therapists are expected to have a detailed knowledge of anatomy, physiology and biomechanics. They're also required to have well-developed assessment and observational skills and expertise in a range of techniques.

Further, massage therapists are expected to complete at least 20 hours of continuing professional development a year. This ensures therapists are current with their skills and they are constantly learning new ways of doing things.

HANDLING COMPLAINTS

The Code of Ethics is an exceptionally useful tool for massage therapists, not only for the educational aspect but also in terms of complaints. While massage therapists should have an understanding of *why* complaints may arise, it can sometimes be difficult to know how to handle them.

It's important to remember that complaints are a valuable tool when it comes to feedback – identifying gaps in the service and providing an opportunity to address the issues. The Standards suggest that massage therapists have a comprehensive complaint management process that ensures an efficient and fair mechanism for complaints is present. The process should also help to collect and monitor the complaints so the therapist can continually improve service.

Going one step further, the Standards provide an outlet for complainants to go to state and territory commissioners if necessary.

PROFESSIONAL BOUNDARIES

Massage therapy can be quite an intimate occupation. As such, it's crucial to maintain professional boundaries at all times. It's important for massage therapists to have a policy in place to protect themselves from any irresponsible behaviour. Key here is understanding the relationship that exists between therapist and client and ensuring a high standard of client history and storage of client files. Going one step further, it also means wearing appropriate professional attire and refusing treatment if the client's behaviour becomes inappropriate.

Remember, this is a service that you, as a massage therapist, are providing to strangers. It's important to maintain professional boundaries at all times. It's also important to understand the signs that a professional relationship may be at risk and have an action plan in place to handle this.

THE RESPONSIBILITIES OF A MASSAGE THERAPIST

Of course, other than the legal and ethical elements of the role, there are also responsibilities which need to be adhered to. This can be referred to as your 'personal code of ethics' as usually. This can encompass [the duty of client care](#), the duty to the profession and ensuring your advertising is professional at all times.

One of the key personal responsibilities is understanding your limits. While you are certified in the health industry, you are not a doctor. As such, it's crucial that you don't hand out any health advice. While it's appropriate to provide some suggestions on health issues that relate to massage, it's inappropriate to discuss other health issues.

For example, issues such as the best time to receive a massage, how to introduce stretching into the client's daily routine and how to take care of their muscles or joints in between sessions are perfectly acceptable topics to discuss as it is directly associated with what you do and how you are helping your client.

It's also important to remember to keep your personal beliefs to yourself. As a professional and a trusted individual in your field, it's expected that you will only provide scientifically-based information rather than your individual philosophies. And finally, remember to act appropriately on social media. While Facebook, Twitter and Instagram can be great marketing tools, they can also be dangerous if you don't use them properly and responsibly.

A career as a massage therapist is a rewarding one and while there are many joys and benefits, especially when you are helping people, there are also ethics and responsibilities to abide by. Take note of these and implement them in your day-to-day practice, and you'll soon be reaping the benefits of a well-rounded career.