

What's a disclaimer and why do I need one for my website?

There are a number of ways that both licensed and non-licensed practitioners of energy therapies can find themselves in costly and debilitating legal dilemmas because of what is published on their websites. Most practitioners using innovative energy based techniques are not aware of the various legal issues that impact and govern their ability to represent themselves to the public via their websites. In this article I will discuss some of the legal principles that generate these potential legal problems and provide some steps for managing the risks practitioners face because of the innovative nature of energy therapies. This is a multilayered approach because there are several areas in which practitioners can have a legal problem - licensing statutes, the Federal Trade Commission, and misrepresentation.

There are actual cases where complaints have been filed by various licensing boards against energy oriented practitioners not because a formal complaint was received by the board from a client but solely because of the content of their websites. The result was these practitioners had to close their practices after spending thousands of dollars in legal fees to answer the complaints and defend themselves because they were unknowingly in violation of their state's laws applicable to professional mental health practitioners. These unfortunate situations could have been avoided had the practitioners been aware of the laws in their state and had taken some simple steps to reduce and manage their legal risks. Please be aware that state licensing boards are routinely looking at websites and targeting those that are in violation of the law. This applies to both licensed and non-licensed practitioners and covers all professional health care practitioners.

First of all, it's important to understand that you must operate within the current legal and regulatory framework that governs how health care is provided in this country. How did this framework evolve into our current health care system? It all starts with the 10th Amendment to the Constitution which grants states the right to protect the safety and well-being of their citizens. As a result, states have passed numerous laws, regulations, and administrative rules to regulate a number of occupations and professions, including, physicians, psychologists, nurses, chiropractors, counselors, lawyers, dentists, real estate agents, etc. The underlying regulatory value upon which all licensing statutes, regulations, and administrative rules are based is public safety.

Energy medicine, energy psychology, energy therapies, energy techniques, whatever you choose to call them, are considered experimental and unsubstantiated and are therefore, not part of any established "standards of care" or "scope of practice" in the mental health care field. In order for new innovative therapies such as those used in energy medicines to be accepted, they must pass the "evidence-based" test. This hasn't happened yet. Consequently even if you believe energy techniques are helpful therapeutic tools, the powers that be, by and large do not. So it's important for you, whether you are a licensed or non-licensed practitioner, to be aware of how energy therapies are perceived by the authorities because it directly impacts your ability to do your healing work in the world.

First, it does not matter if you are an individual practitioner (licensed or non-licensed), part of a group practice such as a wellness or integrative care clinic or an organization.....you need a website disclaimer. A disclaimer is generally any statement intended to specify or delimit the scope of rights and obligations that may be exercised and enforced by parties in a legally-recognized relationship. Your website is like a "contract" between you and each visitor to your website and thus you become legally and "contractually"

bound by what you publish on your website. Another way to look at your disclaimer is that it's a type of "informed consent" for each visitor. By posting your disclaimer prominently and by having the specific legal language you need for your website, the viewer agrees to the terms of the disclaimer. This agreement should include that the visitor assumes any and all risks associated with viewing and/or using any of the information contained on your website

You need a disclaimer on your website to reduce your significant legal risks. While it is clear that disclaimers provide no guarantee of any shield from liability, you need a disclaimer so as to be able to at least have some claim to a defense.

What legal risks you face depends on the content of your website. Many energy based practitioners provide information, advice, and/or instructional information on their websites which exposes them to potential legal claims. For example, you could be sued for negligence if someone claimed to suffer any injury (physical or emotional) because the person followed advice you provided on your website. The risk of facing a lawsuit is greatly enhanced if you provide any instructional information about a technique, process, or modality on your website. Let's say you provide on your website the basic steps or process on how to do energy technique/intervention and state that the technique/intervention can help depression or make you feel more positive. What if your visitor suffers from severe depression and in using the process published on your website claims that he/she didn't feel any more positive and in fact claims his/her depression got worse instead of better? Not only are you at risk for being sued for negligence but also for providing misleading information that could also lead to a claim of misrepresentation and potentially fraud. Remember a claim can be made by a disgruntled client. Given our ever-growing litigious society and the fact that energy modalities are considered experimental by the authorities and most of the public, only heightens your legal risks associated with having a website. Not to mention the Federal Trade Commission Task Force investigating innovative practitioners' websites and enforcing the laws which prevent deceptive and unfair acts or practices.

There is no "standard" language that applies to disclaimers. Each disclaimer must be tailored to include precise language to fit the specifics of the website both in terms of the substance of the material and how it is intended to be used. General language will not suffice.

A disclaimer is useless if it is borrowed from another website or is a generic form. An appropriate disclaimer has many elements depending on the nature of the website and the contents thereof. Some of the key points are:

- State that all information is of a general nature only and must not be taken as advice; and
- Instruct visitors to make their own independent inquiries before acting on any information; and
- State there is no existence of a professional relationship; and
- Provide that testimonials do not constitute a guarantee, warranty, or prediction; and
- Provide assumption of risk and release of claims language; and
- Provide protection of intellectual property (i.e. copyright) and trademarks, if applicable.

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