



# Legal Issues in the Practice of Energy Therapies

*Reduce Your Potential Liability & Empower Your Practice with Essential Risk Management Strategies*

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Healing Touch Professional Association brings you this practice and business support article written by Midge Murphy. As we continue to bring Healing Touch and other Energy Therapies into “main-stream,” we also increase our exposure to main-stream legal regulations. Our intention is to keep you informed. We hope you will agree with how Midge puts it: *“Many energy healing practitioners do not want to deal with the legal aspects of their practices. What I’ve experienced is that once legal issues are addressed and appropriate risk management tools are put into place, the practitioner moves from a place of resistance and fear to one of empowerment.”*

**T**he purpose of this article is to identify the legal issues that affect both licensed and non-licensed practitioners who use energy therapies or techniques (ET) with clients and to provide risk management strategies that can be implemented to reduce the legal vulnerabilities inherent in using innovative energy healing methods with clients. I’ll cover 3 basic areas: licensure and scope of practice; informed consent agreements & liability insurance; marketing your ET practice.

Since ET methods are still considered experimental by the mainstream health care industry, the legal system, licensing boards, and regulatory agencies, all practitioners who incorporate ET methods face significant

legal risks. Like it or not...we all must operate within the current legal and regulatory framework that governs the delivery of health care in this country. ET methods fall under the umbrella of complementary and alternative medicine (CAM) and therefore, are considered complementary or alternative to the healing arts that are licensed in the United States. Please keep in mind the information contained in this article is not intended to create fear but to broaden your knowledge base and empower you as a healing arts practitioner.

## **Licensure and Scope of Practice**

ET methods are multi-disciplinary and are being used by many different types of healing professionals. Traditional licensed health care providers who are licensed in every state, such as psychologists, physicians, social workers, chiropractors, and nurses are now incorporating ET methods into their respective practices. Professionals using ET methods also include practitioners who are licensed in some states but not in others, such as naturopaths, acupuncturists, and massage therapists. There is a third group of practitioners using ET methods that are currently not subject to licensure, which includes shamans, coaches, energy medicine/psychology practitioners, herbalists, Reiki, Healing Touch, and Therapeutic Touch practitioners, medical intuitives, etc.



It's important to know that under the Tenth Amendment to the U.S. Constitution, states have the right to regulate matters of health, safety and welfare affecting citizens, including licensing professions that provide services to the public such as physicians, psychologists, and attorneys. As much as these licensing laws may appear to be unfair, overbearing, and restrictive to some energy oriented practitioners, there is a reasonable basis for why things are the way they are...we can all agree that the safety and welfare of our clients is paramount.

scope of practice as it was taught to them during their training without realizing that scope of practice ultimately is legally defined. So while a practitioner is competently practicing the ET method as it was taught to him/her, the practitioner could still be in violation of the law. Even in those states that have enacted health care freedom legislation which can reduce potential legal liability from practicing a licensed profession, non-licensed practitioners must tread carefully in how they conduct their practices.

To protect your practice know, understand, and be in compliance with the laws and regulations that apply to you and your practice. Each state is different.

Licensed providers must comply with the laws and regulations in their state which regulate their profession. By practicing innovative ET methods, a licensed practitioner may be subject to professional discipline. Also practicing innovative and unsubstantiated therapies can legally be determined to be per se malpractice. A licensing board could take the position that a physician who uses ET methods is practicing below the standards of practice or outside his/her legally defined scope of practice. This is considered unprofessional behavior and could lead to probation, suspension, or revocation of the physician's license. Some states have a law that protects physicians from professional discipline for using CAM methods so long as the physician can demonstrate training and competency in the CAM methods he/she uses and has the client sign an informed consent agreement for the CAM methods offered by the physician.

A non-licensed practitioner is not subject to professional discipline by a licensing board. However, a non-licensed practitioner is exposed to the claim of practicing a profession without a license and could be charged with a crime. Many non-licensed healing practitioners mistakenly believe they are safe from prosecution because they are practicing within their

### RISK MANAGEMENT STRATEGIES

- To protect your practice know, understand, and be in compliance with the laws and regulations that apply to you and your practice. Each state is different.
- Seek professional advice from an attorney or risk management consultant.
- Be a member of a national organization which has a certification program, standards of practice, and an ethics code such as Healing Touch Program's Healing Touch Professional Association if you are a Healing Touch practitioner.
- Get training in the ethical and legal principles that govern healing arts practitioners
- If you are a licensed professional make sure you can demonstrate to your licensing board that you have significant training and are competent in the ET methods you use. A weekend workshop or attending a conference will not suffice. Certification or evidence of completion of a comprehensive training program is essential.
- If you are an unlicensed practitioner make sure you can demonstrate that you have had significant training and are competent in the ET methods you use. A weekend workshop or



attending a conference will not suffice.

Certification or evidence of completion of a comprehensive training program is essential.

- Do not get ordained over the internet by filling out a form and paying a nominal fee. It's a myth that being ordained in this manner provides any protection from legal liability!

## **Informed Consent Agreements & Liability Insurance**

A core psychological concept of ethics in the helping professions is that the relationship is always client-centered. An ongoing robust informed consent process is essential for maintaining a client-centered practice. It is also the cornerstone for building rapport and trust with your clients. Informed consent for services is also a legal procedure to ensure that a client is competent and has voluntarily agreed to engage the services of the helping professional. Many practitioners are unaware that a client informed consent document is a legal agreement that not only needs to comply with applicable state laws but it also needs to be legally sound and drafted specifically for the practitioner's practice.

Some states have laws requiring a practitioner to obtain a signed informed consent agreement from each client which contains specific language. In addition, insurance companies may require a release of liability clause be included in a written informed consent document in order for the practitioner to obtain professional liability insurance. Failure to obtain written client informed consent agreement can lead to claims of malpractice, negligence, misrepresentation, or other legal claims. In addition most ethics codes require informed consent agreements.

As a general rule, all licensed health care professionals are required to purchase liability insurance in order to obtain and maintain their licenses. This type of insurance protects both the caregiver and the client and is an essential risk management tool. Licensed providers are accustomed to budgeting for liability insurance as part of the cost of doing business. Historically insur-

ance companies who offer coverage to health care professionals will not cover ET methods. This lack of coverage resulted in licensed health care providers hesitant to offer ET methods to patients...without liability insurance the risks are too great. In the past it was not possible for non-licensed ET practitioners to purchase professional liability insurance. Fortunately, coverage is now possible for both licensed and non-licensed practitioners of ET methods. Several organizations such as Healing Touch Professional Association (HTPA) and the Association for Comprehensive Energy Psychology (ACEP) offer professional liability insurance to their members at a reasonable cost. Because there are a number of ET methods it's important to make sure the insurance you purchase covers your particular ET method(s).

### **RISK MANAGEMENT STRATEGIES**

- To protect your practice know, understand, and be in compliance with the laws and regulations in your state regarding informed consent agreements
- Seek professional advice in creating your client informed consent agreement. It should be written and designed specifically for your practice. You are unique!
- Do not use a generic form, get it out of a book, or borrow a client informed consent agreement from another practitioner. It will not legally protect you!
- To protect your practice purchase Professional Liability Insurance

## **Marketing Your ET Practice - Websites**

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 the title they use, how they describe their services, and 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. 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 complaint and defend themselves because they were unknowingly in violation of their state's laws applicable to licensed health care providers. Many energy healing practitioners could unknowingly be in violation of their state laws, including their medical and/or psychological practice acts by using a protected title or describing their services which sends up a red flag to a licensing board. 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.

In addition to licensing boards, ET practitioners also could unknowingly be in violation of Federal Trade Commission (FTC) regulations promulgated to prevent fraud, deception, and misleading and unfair business practices in the marketplace. The FTC pays closest attention to ads and websites that make claims about health and safety and has put together a task force to review websites offering health care products or services that make questionable claims of curative ability; are exaggerated, or unproven. The FTC is specifically targeting "newly discovered" therapies that claim to help cure a wide range of ailments. Practitioners can significantly reduce their risk of having a run-in with a licensing board or receiving a complaint from the FTC by conducting a risk management audit of their website and other marketing materials.

### RISK MANAGEMENT STRATEGIES

- To protect your practice know, understand, and be in compliance with the laws and regulations in your state regarding use of titles and description of services.
- Conduct a risk management audit of your practice, including your website and other marketing materials.

- Seek professional advice in creating a legal disclaimer for your website. Every website needs one. It should be written specifically for the content of your website.
- Do not use a generic form, get it out of a book, or borrow a disclaimer from another website. It will not legally protect you!
- Follow FTC rules and regulations regarding advertising - especially testimonials

### In Conclusion

The good news is that energy-oriented practitioners are helping clients heal and are making a significant contribution to the health care field. ET methods are becoming better known which also means the authorities are beginning to take notice. Along with this success comes the concurrent responsibility to make sure you are conducting yourself in an ethical manner and are in compliance with applicable laws and regulations. While we love doing our healing work with clients and tend to focus on that aspect of our practice, it's important to remember your practice is a business. So the cost of doing business not only includes getting training but also having solid business practices in place and implementing risk management strategies to protect and empower your practice and honor your clients.

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