



contingency insurance applica
property disclaimers warranty fine print contr
on legal terms and conditions taxes binding waive
application confidential
ne print harmless ind
s binding contingency i
of service confidential intellectual property disclai
hold harmless indemnification legal terms
ingency insurance applicat

FINE PRINT

What Is a Disclaimer and Why Do I Need One for My Website?

Midge Murphy, JD, PhD (Energy Medicine)

Most energy healing practitioners have websites for the purpose of promoting their practices and acquiring clients. However, most of these practitioners do not understand the legal vulnerabilities they face just because they have a website, including not having a legally sound website disclaimer drafted specifically for the contents of their website.

Over the many years I have been advising practitioners and organizations about legal issues in the practice of energy-oriented methods, many initially are resistant to anything legal such as website disclaimers. It is not uncommon for clients to remark that dealing with legalities and risk management feels uncomfortable. What I have experienced is that once legal issues are addressed and appropriate risk management tools are put into place, the client moves from a place of resistance and fear to one of empowerment.

In this article I will discuss the importance of having a disclaimer on your website as an essential risk management strategy for protecting your practice. This article will also provide some of the basic information that should be included in your website disclaimer and explain why the placement of your disclaimer on your website is critical - in order to be effective.

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 obligated and "contractually" bound by what you publish on your website. Another way to look at your disclaimer is that it is 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.

Even though a disclaimer provides no guarantee of any shield from liability, you still need a disclaimer so as to be able to at least have some claim to a defense. There is a recently published case in New Zealand (*Patchett v SPATA*) where a visitor to the SPATA website filed a claim of negligence; the court found SPATA's disclaimer was effective in protecting SPATA from liability.

What legal risks you face depends on the content of your website. Many energy-oriented practitio-



What is a Disclaimer?

ners 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, emotional, financial, etc.) 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.

For example, on your website you may provide the basic steps or process on how to do an energy technique/intervention and state that the technique/intervention can help depression or make you feel

consumer protection agency and its mission is to prevent fraud, deception, and unfair business practices in the marketplace. In the example, above, in addition to a claim by a visitor, you also face the risk of a claim from the FTC for misleading advertising. Therefore, a legally sound disclaimer also can help the practitioner be in compliance with FTC regulations and consumer protection laws in his/her state.

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

It is not uncommon for clients to remark that dealing with legalities and risk management feels uncomfortable.

more positive. What if your visitor suffers from severe depression and in using the process published on your website claims that he/she did not 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 potential fraud. Remember a claim can be made by a disgruntled visitor even if there is no merit to the claim. You would still have to hire a lawyer and defend the claim which can cost thousands of dollars. Given our ever-growing litigious society and the fact that energy modalities are considered experimental by the authorities and most of the public, this only heightens your legal risks associated with having a website. The best way to reduce this risk is to have a legally sound website disclaimer.

In addition to potential claims from visitors to your website, an energy-oriented practitioner faces the risk of being in violation of Federal Trade Commission (FTC) rules and regulations. The FTC is the nation’s

not suffice. 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 educational in nature and is provided only as general information and is not medical or psychological advice; and
- State there is no existence of a professional relationship between the practitioner and visitor; and
- Provide that testimonials do not constitute a guarantee, warranty, or prediction regarding the outcome of an individual using (insert modality) for any particular issue; and
- Provide release of liability language stating the practitioner accepts no responsibility or liability whatsoever for the use or misuse of the information contained on the website, including links to other resources; and
- Provide an assumption of risk legal language clause; and



- Provide release of liability, indemnification, and hold harmless legal language clause; and
- State if any court of law rules that any part of the disclaimer is invalid, the disclaimer stands as if those parts were struck out.
- State by continuing to explore this website, you represent you have read, understand and agree to the terms of the disclaimer.

Not only is the content of your disclaimer important but also the placement of it on your website is crucial. You could have an excellent disclaimer but if it is not positioned correctly on your website, it can be rendered meaningless. Ideally, the disclaimer should be a portal through which the visitor must go to access the contents of your website. This means that visitors must be instructed to read and agree to the disclaimer before exploring your website. This act forms the basis to argue that the visitor entered into a “contract” with the publisher of the website and specifies that the visitor used the information on the website with full knowledge of (informed consent) and agreement with (contract) the disclaimer. If it is merely tucked off into some inconspicuous link that can be easily bypassed by the visitor, the publisher’s argument that a contract has been established has very little merit.

The value of disclaimers depends upon the skill with which they are drafted so to use some form copied from another website will turn out to be legally ineffective. If you rely on some generalized disclaimer to protect yourself, you may find that in an attempt to “save” money you may instead incur substantial losses. The cost of engaging the services of a risk management consultant or lawyer that has the expertise in energy therapies to help you with your disclaimer is a sound investment. It is my hope that the information shared with you in this article has been helpful -- and speaking of disclaimers – here is mine:

Disclaimer The information provided in this article is for educational purposes only, as well as, to give you general information and a basic understanding about a website disclaimer, not to provide specific legal advice. By reading this article you understand that there is no professional relationship between you and the author. The information provided in this article should not be used as a substitute for competent professional advice from a professional liability risk management consultant or from a licensed attorney in your state. €

© 2014 Midge Murphy, all rights reserved. Any unauthorized use of this article is prohibited by federal law. No part of this document may be reproduced or transmitted in any form or by any means, including photocopying, for public and/or private use without permission in writing from Midge Murphy.