

## How To Avoid Potential Legal Problems (Part Three)

When a client claims you caused an injury, take these steps to protect yourself.



### Introduction

This series presents recent ethical queries I have received from MTJ readers. Part One addressed on-the-spot management of the client who attempts to sexualize the massage experience; Part Two responded to questions about business ethics and hiring practices. This final part presents a query and response about how to ethically manage a client's allegations of harm.

### Query

This query is from a massage therapist who works at a ski resort in New England.

Last week, the resort hotel manager where I work called to tell me that a client I massaged the previous week had contacted her. The client said that her foot bothered her the day after the massage, so she saw her doctor, who ordered X-rays. The doctor diagnosed as having a broken bone in her foot as well as an injured tendon. She blamed the massage for her injury, which ultimately meant she blamed me. Her statement to the hotel manager was, "The massage therapist was very sweet, and I know she didn't mean it, so I am only requesting that the hotel pays my medical expenses."

The hotel manager was stumped as to how to respond to the client, and essentially told me that it was up to me to figure out what to do about this problem, and that the hotel was unwilling to pay for the medical expenses.

I remember the client well. She and her husband received massage in the

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same room; while I massaged this client, another therapist massaged the husband nearby behind a room divider. I administered a general Swedish relaxation massage, and I remember that the client was ticklish when I massaged her feet, so I know I didn't even give deep pressure to her feet. In fact, I know that throughout the massage, I checked in frequently about depth and pressure, and she always responded that it was fine. And, as she left, she said she enjoyed the massage and did not limp or otherwise indicate that she had an injured foot.

How do I prove I didn't do this, and what do I need to do to protect myself from being sued? I am a member of AMTA, and I am covered under their malpractice insurance.

Thank you,  
Carol  
New England

## My Response

The issue raised by this situation is a very good one to bring to MTJ readers, since all massage therapists are vulnerable when it comes to being accused of any number of wrongful acts. In your case, where it is alleged by a client that your actions caused physical injury, I have some thoughts and suggestions.

As difficult a reality as it may be, from a litigious standpoint, any client can accuse you of anything, and no one is exempt from being sued. We strive to follow standards of practice, scope of practice and ethical codes for many reasons, among them is the fact that we want to practice safely and responsibly. But we are also equally interested in doing all we can to protect ourselves from being perceived as doing harm to another. In other words, we aspire to do what is "right" for altruistic as well as self-protective reasons. So when we are competent, our motives are clear, our intentions are good and we act within all of our legal and professional parameters,

we can at least approach a situation such as yours with the confident knowledge that we need to defend ourselves and our work. We cannot afford to waiver in our conscientiousness about any aspect of our practices if we are to be able to present ourselves powerfully on our own behalf.

In response to your situation, I have the following suggestions:

Call the company that provides you with malpractice insurance to inform them of the situation. Even though the client hasn't initiated legal action, it is best to inform your insurance company of the situation as soon as possible in the event that you are sued. They may have some suggestions that can help you.

Review her medical history and intake forms. This will help you detect if she indicated any foot issues or discomfort before you worked on her. Medical history taking is critical, and at times like this, you realize how seriously you need to regard the condition of clients pre-massage. Every ache and pain they mention should be documented on an intake form with pictures where they can circle where they have discomfort. Even if the intake information says nothing that directly addresses her post-massage complaints, the fact that you have a complete and detailed medical history substantiates your professionalism and validates your thoroughness.

Document everything. We are taught in massage school that documentation is important, and this is a clear case where it is essential. Having clear recall about the massage session is certainly in your favor. Beyond what you documented in your SOAP or other form of notations for the massage with this client, I suggest you write down all of the facts that you can remember. For example, note that you checked in with her often, and she didn't comment negatively on the depth or pressure of your techniques, that her feet were ticklish and you couldn't apply deep pressure, that you massaged her with her husband and another massage therapist in the room, and that she walked



out after the session saying she enjoyed the massage and was not obviously limping or in any discomfort.

It also will be helpful to document other facts that are true about massage and injury, just for the record. For example:

- Massage modalities, even deep tissue techniques, cannot cause a spontaneous bone fracture unless there is a serious preexisting pathology that the client didn't report to the massage therapist.
- Massage modalities are not injury or trauma-inducing to healthy bones and tendons. The type of trauma that would need to be induced to cause the type of injury alleged by the client would be so extreme that a client would at least withdraw his or her foot and cry out in pain, and would likely stop the massage. No person with normal pain sensation is likely to let someone break a bone and injure a tendon without resistance.
- Unless there was a preexisting pathology present, anything that could possibly fracture a foot bone or injure a tendon would cause enough pain that it would cause a client to at least cry out from the injury as it was happening. Other people within earshot would be aware that an injury was occurring.

Keep the documented information and consider giving the documented facts about massage and injury to the hotel for their information. If the clients you work on at the hotel belong to the hotel, it is safe to give the hotel a copy of the SOAP notes and the facts you recall about the session. However, if the client is considered "yours," hold off giving the hotel the personal information about the client to ensure confidentiality. Of course, if this ends up in court, all

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information must be presented. Until then, follow your confidentiality protocol and leave out information that is not relevant to the situation.

Don't panic. Until you know for sure that you are being sued, though, there is no point in jumping to conclusions and losing energy to worry. It may not happen at all. And, if it does happen, you have malpractice insurance for this very reason.

Think about how you can protect yourself from situations like this in the future. The best way I can think of to have better protection from being accused of causing major problems that show up the day after a massage is to develop a client feedback form that is filled out before the clients leave. Adding more paperwork is tedious, but it may be worth it if it gives you statements clients made about how they felt after the massage. This gives you a documented baseline of how the massage affected them immediately following the treatment, and it gives them the opportunity to inform you of any discomfort they may be having. The questions on the feedback form might include:

- What did you like best about the massage?
- Was there anything about the massage that you would want to be different next time?
- Do you have any pain or soreness now?
- How are you feeling overall after the massage?

Let us consider how your situation would have been different if this client had filled out a feedback form where she answered these questions with the same verbal information she gave you where she said she enjoyed the massage. You would have documented proof that she didn't complain of pain after the massage, which confirms

the likelihood that you didn't cause her any injury during the massage.

### Summary Thoughts

It is disconcerting to think that a client could believe that a relaxation massage could break a bone or injure a tendon. Furthermore, it is very disconcerting to know that anyone can sue you for just about anything. Dwelling on such negativity will not serve us in our attempts to be compassionate, professional caregivers. It is important that we stay positive, but there is a way to do that and still be ready if we are presented with the negative.

Be prepared! Be sure you are obtaining medical history intakes and that you are documenting your sessions in ways that you can recall what you did and how the client responded. Think about what you would do if a client you worked on called you the next day and accused you of breaking a bone in her foot. Carol's case serves to warn us of what can happen. To be forewarned is to be forearmed; do everything you can so that you will have what you need to ethically protect yourself if you are faced with allegations of harm. ❏



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