EVOLVE COLLEGE UPDATE – LEGAL AND ETHICAL

This resource contains an update on Legal and Ethical materials which all massage therapists should be aware of in their practice. Keep this as a handy reference for you in your practice.

CONFIDENTIALITY

As you are aware, keeping client information confidential is part of your duty as a massage therapist. You must not disclose client information unless an exemption applies, such as if:

- The therapist reasonably believes that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health or safety, or a serious threat to public health or public safety
- The client has requested a written report for another health professional or agency
- The client authorises disclosure
- The therapist is permitted or compelled by law to disclose client information
- The therapist reasonably believes that the use or disclosure is reasonably necessary for an authorised act on behalf of an enforcement body such as in relation to criminal offences or seriously improper conduct or prescribed conduct.

PRIVACY

As a massage therapist, you are also deemed to be providing a health service and you are therefore required to meet the requirements of the Privacy Act 1988 (Cth), and comply with the 13 Australian Privacy Principles (APPs), which are:

1. Open and transparent management of personal information
2. Anonymity and pseudonymity
3. Collection of solicited personal information
4. Dealing with unsolicited personal information
5. Notification of the collection of personal information
6. Use or disclosure of personal information
7. Direct marketing
8. Cross-border disclosure of personal information
9. Adoption, use or disclosure of government related identifiers
10. Quality of personal information
11. Security of personal information
12. Access to personal information
13. Correction of personal information

WORKING WITH CHILDREN

If you work with any child under the age of 18 years, you must hold the relevant working with children or other check required in your state(s) or territory(ies) of operation:

- **NSW**: A Working with Children check is required for all massage therapists who provide massage to children. *(Child Protection (Working with Children) Act 2012 (NSW))*
- **ACT**: A background check and registration is highly recommended for all massage therapists who provide massage to children. *(Working with Vulnerable People (Background Checking) Act 2011 (ACT))*
- **VIC**: A Working with Children Check is highly recommended for all massage therapists who provide massage to children. *(Working with Children Act 2005 (Vic))*
• QLD: A Blue Card is required for all massage therapists who provide massage to children. 
  (*Child Protection Act 1999 (Qld))
• WA: A Working with Children Check is highly recommended for all massage therapists who provide massage to children. (*Working with Children (Criminal Record Checking) Act 2004 (WA))
• SA: A National Police Certificate is required for all massage therapists who provide massage to children, whereby they must undergo a DCSI screening. (*Children’s Protection Act 1993 (SA); Child Safety (Prohibited Persons) Act 2016 (SA) & Children’s Protection Regulations 2010 (SA))
• TAS: A Working with Children Check is highly recommended for all massage therapists who provide massage to children. (*Registration to Work with Vulnerable People Act 2013 (TAS))
• NT: A Working with Children Clearance or Ochre Card is highly recommended for all massage therapists who provide massage to children. (*Care and Protection of Children Act 2007 (NT))

REPORTING ABUSE
In some states/territories, it is mandatory for massage therapists to report any suspected child neglect or child abuse to the appropriate statutory child protection authority. Whether or not it is mandatory, it is Evolve College policy based on ethical grounds that massage therapists should report all suspected child abuse or neglect to the relevant authority.

• ACT: Not mandatory reporting, however any person who believes on reasonable grounds that a child is in need of protection can make a voluntary report. Call Child and Youth Protection Services – https://www.childwise.org.au/page/47/state-legislation-reporting-act
• VIC: Reporting physical injury or sexual abuse is not mandatory for massage therapists in Victoria, however it is recommended. Report to your local Child Protection Office (https://services.dhhs.vic.gov.au), Child Protection Crisis Line (open out of hours) or the National Child Abuse Helpline (open in business hours): https://www.childwise.org.au/page/42/state-legislation-reporting-vic
  Note in addition there is a criminal provision relating to child abuse: All adults in Victoria are mandated to report any sexual offence against a child of 16 years or younger, under section 327 of the Crimes Act 1958 (VIC): report to the police.
• WA: Not mandatory reporting, however recommended. Report to your local Child Protection and Family Support office, the police, or via Crisis Care or the National Child Abuse Helpline: https://www.childwise.org.au/page/45/state-legislation-reporting-wa
• NT: Mandatory reporting. Every person is legally required to report child abuse and neglect and cases where children have been or are likely to be a victim of a sexual offence. Reports must be made to the police in an emergency, or to a police officer, the Child Abuse Hotline or Crime Stoppers. See https://nt.gov.au/community/child-protection-and-care/child-abuse
• TAS: Not mandatory reporting, however any person who believes on reasonable grounds that a child is in need of protection can make a voluntary report. Report by calling Child Safety Service: https://www.childwise.org.au/page/46/state-legislation-reporting-tas

WORK BOUNDARIES
As a massage therapist, you must stick within the scope of your role. Medical diagnosis is not permitted, as this is the work of registered medical practitioners only, and nor are you to treat anyone presenting a condition outside what you are qualified and have been trained to do. Likewise, professional boundaries must be absolutely respected at all times.
As a massage therapist you should never engage in:

- Any form of sexual or inappropriate touch
- Any touch that could be reasonably be perceived to be sexual or inviting sexual conduct
- Sexual innuendo or otherwise inappropriate communication
- Tolerating inappropriate behaviour from clients
- Gossiping or disclosing any personal information of clients to anyone other than by law
- Initiating romantic relationships with clients
- Interacting with clients within or outside of treatment in an inappropriate way
- Counselling or psychoanalysing a client
- Performing any technique under the auspices of your Evolve College qualification other than that which you have been taught by Evolve College
- Practising under the influence of alcohol and/or drugs
- Treating clients if prescribed medications you are taking have the risk of impairing professional judgement
- Wearing anything other than full professional attire whilst treating clients
- Failing to disclose information to clients regarding treatments and your own qualifications

You must comply with the Evolve College Zero Tolerance Policy on Inappropriate Conduct at all times. Download this very important policy from our website (About/Policies).

WORK HEALTH AND SAFETY

All massage therapists must follow the Work Health and Safety (WHS) legislation applicable in their state or territory:

- NSW, ACT, QLD, SA, TAS, NT and the Commonwealth of Australia: operate under national model WHS legislation adopted in their jurisdiction.
- WA currently operates its own model of work health and safety legislation, but is developing a modernised WHS Bill per the national model.
- VIC operates its own model of work health and safety (Occupational Health and Safety).
- Across Australia massage therapists are required to adhere to the Work Health and Safety Act 2011 (Cth).

The purpose of WHS legislation is to ensure the health and safety of workplaces and protect all people in them from harm. Safe Work Australia maintains the model WHS laws. See https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws.

You should have a policy and procedure in your workplace under which you routinely:

- Identify hazards in the workplace
- Assess the risk (how people could be hurt) and what is the likelihood of this occurring
- Determine the most effective and practical risk control under the circumstances
- Review risk controls and evaluate how effective they are

Disclaimer

This update canvasses some of the important aspects of legal and ethical requirements pertaining to massage therapists, as covered in your study. It is not intended to be a comprehensive outline of all requirements pertaining to your practice as a massage therapist, and should not be relied upon as an account of what you are responsible for. It is your responsibility to ensure that you are compliant with all applicable laws and regulations at all times. The above is intended as a guide only, not to be relied upon as comprehensive, in relation to the topics mentioned. Part of your responsibility as a therapist is in keeping up with changes to laws and regulations which affect your practice, from time to time. Note that as well as changes to existing requirements, new requirements can be introduced from time to time. Keeping up to date with these is part of your job, and a good source of information on industry requirements is to be a subscriber to your professional association’s e-newsletter and journal, as well as doing your own research and regularly visiting other relevant industry body websites for updates.

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