

RUBBED THE WRONG WAY

By Jenny Hontz

Sexual assault and misconduct claims in the massage room have dramatically increased. Here's how to keep your clients and business out of harm's way.

Editor's note: The contents of this article may be considered explicit to some readers.

TAMARA FRIEDMAN FEELS LIKE SHE dodged a bullet. A couple of years ago, the owner of Tamara Spa (www.tamaraspa.com) in Farmington Hills, Michigan, hired an enthusiastic male massage therapist who gained an immediate following with clients. Then one day, a young female customer complained that he “went too far” during a massage.

When the therapist denied any inappropriate behavior, Friedman gave him another chance. Soon thereafter, a second female client left the massage room in tears. “I was shocked,” Friedman says. “She said that he uncovered her, removed the towel from her breasts and said, ‘This is a good area to massage.’ On her legs, he went higher than he should have. He later told me that she seemed to enjoy it.”

Friedman fired the employee. However, another local spa soon hired him without calling her for a reference. “He did the same thing at that spa,” she says, and this time the client sued. The spa went out of business, and the therapist wound up in jail. “When there’s bad publicity, it’s impossible to recover,” Friedman says. “Those women could’ve sued me. I’ve been in business 28 years, and I

could’ve been destroyed in one hour.”

Indeed, more day spas than ever are facing such legal peril. While no one in the industry keeps comprehensive statistics on these lawsuits, many spa owners and insurance companies covering them say they’re seeing an increase in the number of cases and expensive payouts for sexual misconduct, abuse and assault in the massage room. “We’ve probably had a half-dozen in the past three years,” says Darryl Stevens, president of Marine Agency Corp. Insurance (www.marineagency.com), which has provided liability coverage to spas across the country since the ’70s. “Prior to that, we never had one. Then all of a sudden—wham.”

All of the cases handled by Marine Insurance involved male massage therapists touching female clients in inappropriate places, often with genital penetration. The costliest settlement was made after one massage therapist at a Los Angeles spa sexually assaulted a paraplegic woman. Marine paid the victim \$1 million and now requires all the spas it covers to conduct background checks during the hiring process.

ROYALTY-FREE/CORBIS

"I'd be lucky to settle one for \$100,000," says Stevens, who reveals the average monetary award approaches \$500,000. "There's no defense. In each of our cases, the therapist admitted to it after being pressured. In some cases, there was a previous incident at another day spa. On one occasion, the spa knew of a prior history, but he had a good excuse, and they hired him anyway. A month later, he did it again."

The rise in cases may be due, at least in part, to increased reporting of sexual assaults, which are still the most underreported crimes committed in the United States. Sexual assault rates fell 60% between 1993 and 2006, while reporting of such misconduct to law enforcement increased 35%, according to the most recent National Crime Victimization Survey data released by the Justice Department's Bureau of Justice Statistics. Regardless of the reason, the problem has become so widespread that it's getting more difficult for some day spas to find sufficient and affordable insurance to

"I have a zero-tolerance policy for any type of sexual misconduct. I terminated an employee immediately when a situation occurred at my spa."



CINDY AJAY
Owner
Blue Sky Day Spa
Sacramento, California

protect them. Some carriers are even excluding or putting caps on sex-related massage therapy cases.

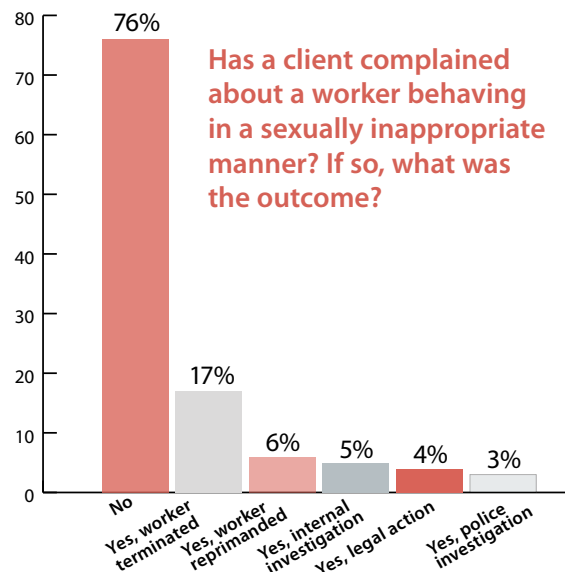
"I'd call it an epidemic," says the owner of a Southern California spa that recently settled an expensive sexual abuse case and saw her insurance rates triple. "I'm upset at the industry as a whole. Big spas ignored this problem for years. I'm scared to death that 20 years of work will go down the drain."

The sudden increase in sexual assault claims by female clients against male

massage therapists has wide-reaching implications for day spa professionals and the industry at large. Even worse, many spas remain vulnerable, as less than one-quarter perform a criminal background check while screening potential employees, according to a recent survey of business owners conducted by DAYSPA. Plus, only one-third provide additional education and/or training to supplement any existing sexual misconduct/harassment policies and procedures that may already be in place.

BEHIND CLOSED DOORS

DAYSPA conducted an online survey of 2,787 business professionals nationwide about rising sexual assault claims in the spa industry. Responses from the survey, compiled in August 2008, appear on subsequent pages.

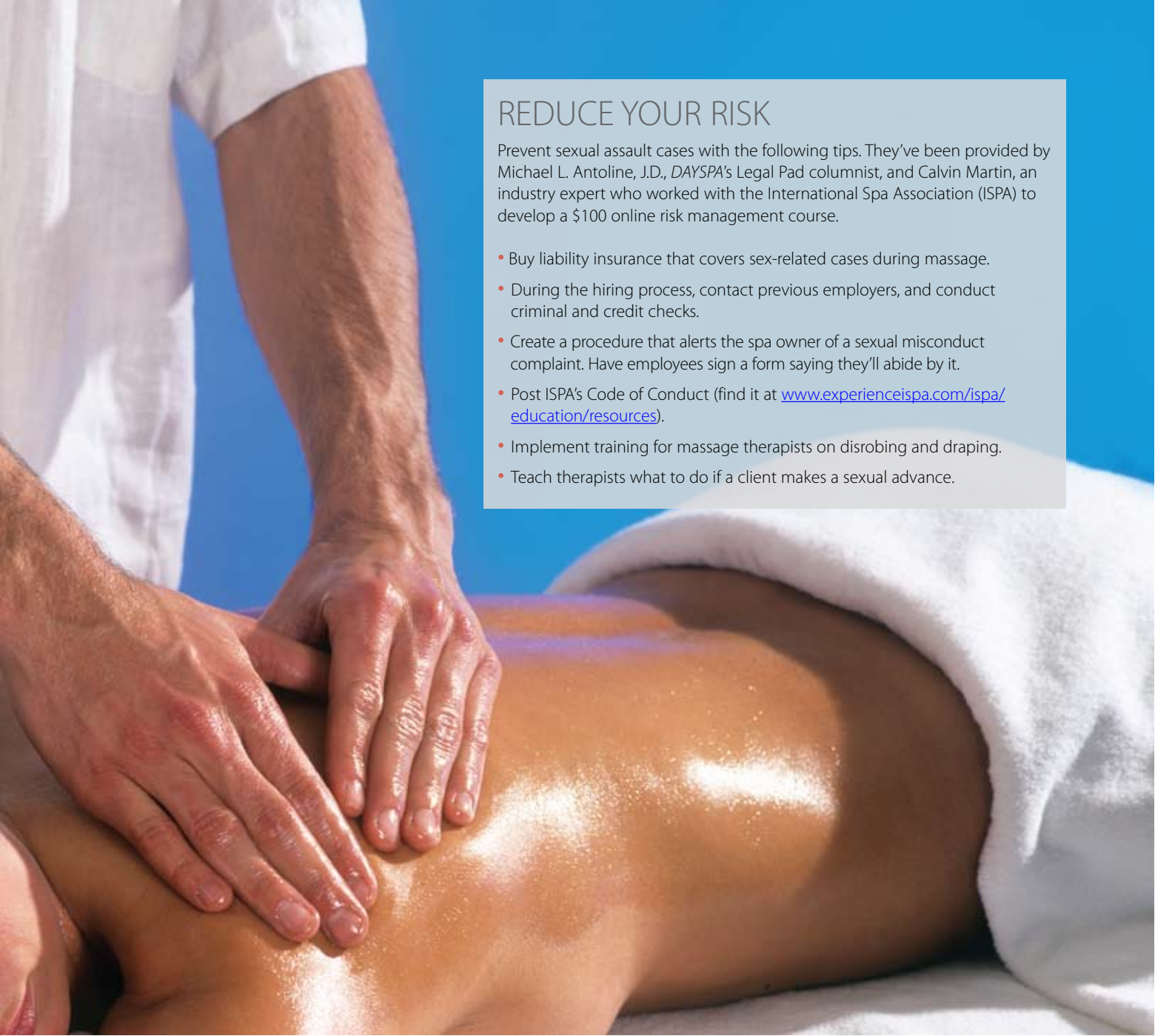


TOO CLOSE FOR COMFORT

Just a few miles down the road from Tamara Spa, another facility located in the affluent Detroit suburb of West Bloomfield Township abruptly shut down this year. The closure of Truth Spa in August occurred after multiple incidents with one of its massage therapists, George Krautner. He pleaded no contest to sexually assaulting female clients, including a mother and daughter, who also filed civil suits.

The former owner of Truth Spa couldn't be reached for comment. However, Det. Eric Gruenwald, who investigated the criminal case, described the spa as a "nice" place frequented by "the rich and famous." Despite the spa's reputation, the first victim to report a problem to police was sexually assaulted by a therapist who penetrated her with his fingers. "He actually ejaculated on her," Gruenwald says.

After the victim filed a report, her mother acknowledged she had been assaulted, too, but had



REDUCE YOUR RISK

Prevent sexual assault cases with the following tips. They've been provided by Michael L. Antoline, J.D., DAYSPA's Legal Pad columnist, and Calvin Martin, an industry expert who worked with the International Spa Association (ISPA) to develop a \$100 online risk management course.

- Buy liability insurance that covers sex-related cases during massage.
- During the hiring process, contact previous employers, and conduct criminal and credit checks.
- Create a procedure that alerts the spa owner of a sexual misconduct complaint. Have employees sign a form saying they'll abide by it.
- Post ISPA's Code of Conduct (find it at www.experienceispa.com/ispa/education/resources).
- Implement training for massage therapists on disrobing and draping.
- Teach therapists what to do if a client makes a sexual advance.

been too afraid to come forward. In fact, during the course of the investigation, detectives found 20 victims who'd never reported a problem. Only eight decided to file formal complaints once the case was under way.

Approximately 60% of sexual assaults committed in the United States go unreported, according to National Crime Victimization Surveys. "Victims are too embarrassed," Gruenwald says. "They don't want to file a report because of repercussions with family members and the public."

Gruenwald adds that the spa knew it had a problem but ignored the issue until Krautner was arrested. Six months earlier, one victim came running out of the massage room crying and told the owner that he had rubbed her breasts and genitals. She reported it to police but decided not to press charges. "The

owner sort of brushed it off and said, 'Here's your money back,'" Gruenwald says.

Sex-related abuse, assault and battery cases have made big headlines in recent months following incidents at multiple spas across the country. However, the problem may be even more widespread than news reports suggest. Spas often prefer to settle cases quickly and quietly to avoid negative publicity. Plus, many victims, as Gruenwald suggested, are reluctant to go public, knowing it can be tough to prove their case in a "he said, she said" situation. In fact, two female massage therapy clients who asked to remain anonymous told DAYSPA that they'd experienced inappropriate behavior during treatments but never spoke up about it.

Allison* was new to massage when she encountered a male therapist in Ojai, California—someone many of her friends highly recommended. He completely

uncovered her nude body during the treatment and started rubbing her breasts. “I was so embarrassed, but I thought it was probably just me,” she says. “I was inexperienced, and he was speaking in a professional manner, very matter of factly. There were no verbal cues that he was doing anything improper.

“As uncomfortable as it was, I was embarrassed to let him know,” she adds. “It was extremely unpleasant.”

After the massage ended, “I was so upset,” Allison says. Even so, she decided not to file a lawsuit because “I didn’t know if what he did was unethical. They should make it clear what is and isn’t proper when you’re having a massage,” she adds.

Industry experts agree. “New clients who’ve never had a massage don’t have a clue what to expect,” says Calvin Martin, a partner at Calvin Martin & Company (www.calvinmartin.com), who advises spa clients on risk management. “There needs to be some explanation of what’s going to occur. Draping is so important, but it varies from spa to spa.”

Given that some clients respond in a neutral manner to sexual advances, therapists who cross the line

may be emboldened to try it again—regardless of the risk of being fired, arrested or sued. Adele*, a massage therapist who worked her way up to manager at a prominent Los Angeles-area chain spa, said she witnessed a half-dozen sex-related complaints against male therapists from 2001 to 2007. She also experienced inappropriate behavior during a massage from a co-worker, who was subsequently fired.

The problem became so common that the spa invited a police officer from the vice squad to lecture employees. Topics included how to drape clients, what to say and the types of behavior to avoid. Even so, one male therapist repeatedly got away with sexual advances during massages because the women involved never complained and sometimes even rewarded the therapist. “Women around the city were going to this guy to get a happy ending,” Adele says. “We were always marveling at the tips he would get, \$60 to \$70.” Eventually the employee was fired after he got caught smoking marijuana on the job.

A similar scenario received a comic touch in an episode of HBO’s *Sex and the City*, although victims who feel violated say there’s nothing funny about it. In fact, they often need therapy to handle the trauma. When women at Adele’s spa got upset and reported a problem, the employee involved was immediately suspended during the course of an investigation, and the facility often called police. In nearly every case, the employee was ultimately fired, and the spa

MAKING HEADLINES

More and more male massage therapists are being accused of crossing the line. Ignoring this problem can lead to bigger liability issues. “Business owners should take it seriously,” says Chris Beshore, vice president of Insurtec (www.dayspainsurance.com). “Never just hope for it to go away.”

Third massage therapist arrested in Salt Lake City for assaulting client, police say
 By Pat Reavy
 Deseret Morning News
 Published: Thursday, March 20, 2008 3:36 p.m. MDT
 3 comments E-MAIL | PRINT | FONT +

Another massage therapist has been arrested for investigation of sexually assaulting a female client. The incident marked the third masseur arrest in Salt Lake City in a little over a month.

Terry Farnsworth, 44, was booked earlier this week into the Salt Lake County Jail for investigation of forcible sex abuse. A warrant was issued late last week and Farnsworth was picked up by another agency Monday, said Salt Lake police detective Jared Wilhongi.

Farnsworth worked at Matrix Massage. He said he assaulted a client while giving her a massage. He was arrested on March 18 from Matrix to be arrested on account of the assault.

In February, Robert Leivar Jones, 30, was arrested in Salt Lake County and charged with forcible sex abuse.

Spa videos earn man prison time
 By PATTY WEAVER, Staff Correspondent
 8/2/2008
 Last Modified: 8/2/2008 2:28 AM

STILLWATER — A former day spa manager who secretly videotaped unclothed women during massage sessions at a now-closed facility in Stillwater was given a five-year prison term Wednesday.

The term will be followed by 25 years probation on 120 charges.

Daniel Robert Hines, 30, of Tulsa had previously been sentenced to 114 counts of unlawful use of videotaping equipment and no contest to 114 counts of sexual battery and one count of attempted sexual battery. Hines also pleaded guilty to one misdemeanor count of possession of drug paraphernalia.

Grey Kathy Thomas said that at least 60 to 80 women were arrested about a six-month period in 2005 at the now-closed Perkins Road in Stillwater.

Wednesday on tulsaworld.com.

He was sentenced at the four-hour sentencing hearing Wednesday to 114 counts of sexual battery and one count of attempted sexual battery. He said police found 150 to 200 videos of women in the spa.

Prosecutors said in asking District Judge...

naplesnews.com

Man pleads in massage case, gets probation
 Richard Edward Poole of Pine Island, accused of molestating a woman at a Marco Island spa, was also ordered to give up his massage license.

By AISLING DUFFY
 Originally published 10:42 p.m., August 15, 2008
 Updated 05:15 p.m., August 19, 2008

A 56-year-old massage therapist from Lee County pleaded no contest to battery Friday and gave up his massage license after a woman told police he committed a sex act on her during a massage at a Marco Island spa.

Richard Edward Poole, of St. James City on Pine Island, pleaded to misdemeanor simple battery reduced from sexual battery, as part of a plea agreement negotiated by Assistant State Attorney Kirk and defense attorney Jerry Berry.

“He’s not admitting to having any type of sexual contact or causing any injury to the alleged victim,” Collier Circuit Judge Elizabeth Klier. “He’s simply pleading no contest to unlawful touchin...

worked out a settlement with the victim.

“Some therapists get into the business because they get turned on,” says Adele, who suspects at least two co-workers were sex addicts. These therapists often believed their clients welcomed the advances, mistook silence for consent and continued to push things further—only to have the clients complain after the fact.

SEX, WHYS AND VIDEOTAPE

Voyeurism played a role in another case. A former day spa manager in Stillwater, Oklahoma, was recently sentenced to five years in prison after secretly videotaping more than 60 unclothed women. The incidents occurred during massage sessions at the now-defunct Integrative Health Center in 2005. Daniel Robert Hines pleaded guilty in August to 114 counts of unlawful use of videotaping equipment, and no contest to four counts of sexual battery and one count of attempted sexual battery. Once he’s released from prison, he must serve 25 years

“The one time I had a client accuse a service provider of misconduct was with a female massage therapist. The client didn’t file any charges but never returned.”



MARTINE LANGSAM
Owner
Renaissance House of Beauty
San Rafael, California

of probation and register as a sex offender.

No one knows exactly why the number of sexual abuse, battery and assault cases filed against spas is increasing. Although nearly all of the criminal and civil suits stem from incidents with male therapists, the percentage of men holding these positions has actually decreased over the past decade. Currently, 15% of American Massage Therapy Association (AMTA) (amtamassage.org) members are men, compared to 22% 10 years ago, although the raw number of male members has increased from 7,000 to 8,500.

Some experts speculate that the explosive growth of the spa

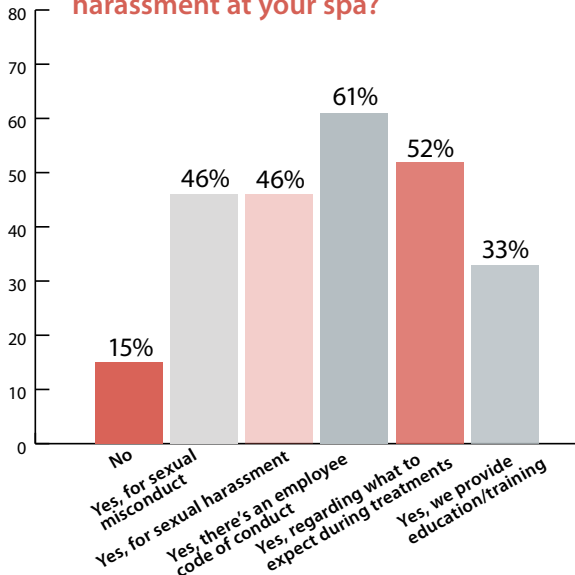
industry over the past 10 to 15 years makes people more likely to take action when something goes wrong. “Historically, there was a more permissive attitude—live and let live,” says Steve Capellini, a massage therapist and spa consultant from Miami, who’s handled and served as an expert witness in sex abuse cases. “Now people are more likely to report a complaint. They’re going after the money. People look at spas like big-time chain restaurants.”

Also contributing to the problem is the increasing demand for massage therapists to meet the needs of so many new spas. This trend may have caused some employers to grow lax with their hiring procedures.

Capellini testified against a spa in a 2006 court case involving an unlicensed “therapist.” He stuck his face between the legs of a female client during a Turkish Hammam treatment, which involves vigorous massage. Although the man admitted the behavior to police before fleeing the country, the spa wasn’t found liable for hiring an unlicensed therapist. The spa’s lawyer convinced a jury that Turkish Hammam was not covered by the laws of massage therapy.

Taking such a risk with your spa isn’t recommended. One of the best ways to prevent problems is by hiring qualified, licensed therapists who’ve been trained in professional ethics. “AMTA has a code of ethics that our members agree to uphold, and which forbids sexual contact of any kind between a massage therapist and a client,” says M.K. Brennan, president.

Do you have policies and procedures in place that address sexual misconduct/harassment at your spa?



“Likewise, states and municipalities that regulate the massage therapy profession make it clear that sexual contact between the massage therapist and a client is unethical and illegal.”

Most licensed massage therapists are trained to respect boundaries and client modesty. “The therapist should imagine that there’s a video camera in the treatment room with his wife, mother, and daughters hearing and seeing all he’s doing,” says Charles W. Wiltsie III, LMT (www.charleswiltsie.com), a continuing education instructor who offers seminars on ethics for men in massage therapy. “If he doesn’t want his mother watching, it’s probably not OK.”

AMTA’s code of ethics forbids any activity that might cause physical, mental or emotional harm. Additional training on standards and procedures at your spa can also go a long way toward avoiding liability problems, especially if employees sign a document stating they understand the rules. The International Spa Association (www.experienceispa.com) has a code of conduct that can be posted where clients can see it.

Some degree of risk is unavoidable, though,

“Of all the situations that occurred during the nine years of my experience in the spa industry, it hasn’t been male therapists that are the problem. It’s been male clients who’ve been sexually suggestive toward female massage therapists.”



DIANA MCLAMORE, LMT
Owner
Wildflower Day Spa
Abilene, Texas

in a business in which a nude female is alone in a dimly lit room with a male massage therapist touching her. However, there are several steps spas can take to minimize it. For example, Rosemary Weiner has an extensive risk management plan in place. Before a new statewide massage licensing law went into effect in January, she was trying to find a new insurance policy but “had difficulty obtaining professional coverage for massage services and body treatments,” the CEO/owner of Brass Rose Spa (www.brassrose.com) in Blairstown, New Jersey, wrote in a memo to her staff. “There’s been an industry-wide increase in the number of

insurance claims associated with massage services.”

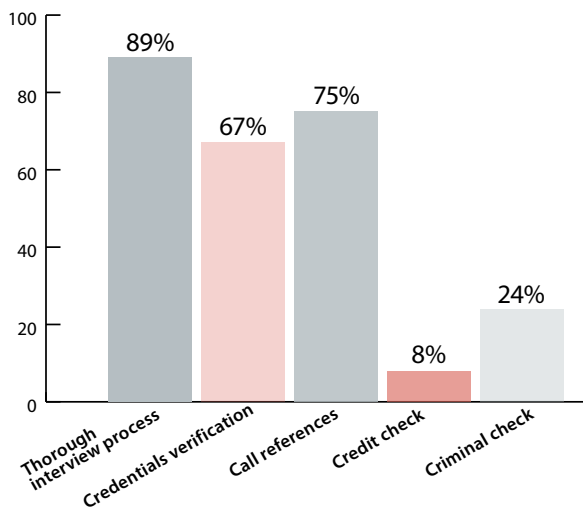
As a result, Weiner tightened the licensing and certification requirements at her spa. While she doesn’t know whether all claims filed against spas are valid, she believes there would be fewer problems if they did a better job of “explaining what to expect to clients.” Weiner has created several documents for employees and guests—Spa Etiquette, Spa Therapist Code of Conduct and Ethics (for a copy, visit www.dayspamagazine.com), Spa Policies and Client Bill of Rights. “It’s important to have a solid description of services, and it’s the job of the technicians to tell clients what they’re going to do during the service,” Weiner says. “The client may have a completely different expectation.”

Weiner has never been sued, but she believes the precautions in place minimize her risk if a claim is filed. “If you can prove you have policies, procedures and protocols, and employees are aware of them and sign that they agree to the terms of their employment, it reduces your liability,” she says. “I’m not an easy target.”

The one area in which Weiner believes she could do more is employee screening. She doesn’t conduct background checks of prospective employees and instead relies on calling references, even though she believes “it’s a waste of time. Most don’t tell the truth,” she says. “They don’t want to get sued.”

Michael L. Antoline, J.D., says spas can and should disclose misconduct when called about past

How do you screen potential employees?



employees. “If someone in my spa was accused of sexual assault, it would be risky to *not* say anything,” says Antoline, DAYSPA’s Legal Pad columnist.

Given the reluctance of some employers to divulge such information, though, relying on references when hiring isn’t good enough. In fact, inadequately screening employees is the single biggest risk a spa can take.

Tamara Spa’s Friedman admits that this was her mistake. Not only did she fail to conduct background checks, but she was also lax about checking references. “I was stupid enough not to call,” she says. “You have to contact previous employers and ask about a person’s reputation. If I hire a male therapist now, I ask 10 million times. It can make or break you.”

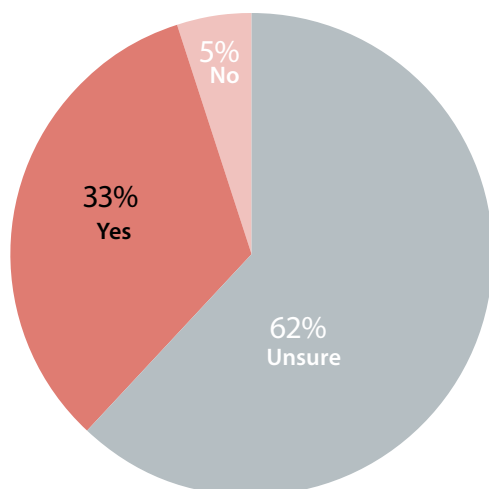
The vast majority of male therapists, of course, are professional. Most would never commit abuses in the treatment room. And creating any sort of blanket ban on male therapists could open a spa to a discrimination suit from prospective male employees.

“I’ve never had a problem with this issue,” says Terry Johnson, owner of Le Meridian Day Spa (lemeridianspa.net) in Yorba Linda, California. “I’ve been a therapist for 25 years and owned my own day spa for 11 years.” To screen potential employees, he uses a thorough interview process, verification of credentials, and reference and criminal checks.

CRISIS MANAGEMENT

In August 2007, a client at Sea Side Day Spa

Does your liability insurance cover sex-related cases?



TAKING ACTION

Here are several ways to maximize your odds of recovering from a sexual misconduct claim:

- Investigate the complaint immediately. Make sure the spa owner or director gets involved in the process right away.
- Try not to let the client leave without signing a form detailing the incident in writing.
- Apologize to the client without accepting blame.
- Call your insurance company at the earliest possible moment. Carriers can deny coverage if there’s any delay in reporting a claim. Even before one is filed, they can provide valuable advice.
- Confront the employee about the allegation. If the therapist admits sexual contact for any reason, fire him.
- Consider informing the police, but be aware that once you do, the incident becomes a matter of public record and may appear in the press.

(www.seasidedayspa.com) on Marco Island in Florida left her 90-minute Swedish massage in tears, telling employees that she was upset about her son in Iraq. Two months later, the spa owner learned from police that the woman pressed charges against massage therapist Richard Edward Poole, an independent contractor, for allegedly molesting her during the massage. “She claims he inserted a finger into her vagina, and she told him to stop,” says Marco Island Det. Glenn Zirgibel. “She paid and left crying, and didn’t report it right away. He pretty much admitted something happened, but he claimed it was an accident.”

In August, Poole reached an agreement with prosecutors. He pleaded no contest to misdemeanor simple battery, a charge reduced from felony sexual battery, and was ordered to give up his massage therapy license.

Spa owner Nancy Schwab was stunned when police informed her of the charges because neither the victim nor Poole ever told her there was a problem. “This was totally unexpected—a shock,” says Schwab, who stopped booking Poole and consulted an attorney after police called her. “The insurance companies are seeing unbelievable suits brought against the industry. I’m one of the lucky ones. They didn’t come after me.”

Still, there are steps spa owners can take to protect themselves when a client accuses a mas-

sage therapist of inappropriate behavior or sexual abuse. It's crucial to have a system in place because the response needs to be swift and consistent. "If there's a complaint, you should document everything and have a point person pre-assigned to take charge," industry consultant Capellini says. "Most spas don't have a plan."

When a problem arises, Martin at Calvin Martin & Company believes the owner or spa director needs to be informed and get involved right away. "It often goes to a supervisor who says, 'Just live with it,'" he says, which can dramatically increase the risk of liability.

To document everything properly, experts suggest taking an incident report. "Don't let the client leave your spa," Martin says. "Apologize, and get everything in writing. Stories change over time. Get a record in writing that's signed by the person reporting the incident.

"Tell her how sorry you are that this occurred," he adds. "But don't take fault."

Spa owners should then immediately notify their insurance carriers. Failing to inform them of a complaint in a timely manner gives insurance companies an opening to deny coverage. Business owners also need to address the accused employee

"I have a skincare school and rarely get a male student. The ones I've had were the best students. But they had a difficult time getting a job and several never did."



ARLENE MALAY
President
College of International Esthetics, Inc.
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right away. If he admits misconduct, the employee should be terminated, regardless of the reason given. "Irrespective of what kind of real or imagined feedback he thinks he's getting from the client, you don't do that in a professional spa," Antoline says. "If he responds in a sexual manner, it's absolutely illegal."

Antoline advises spas to inform police if the therapist admits wrongdoing. However, Martin urges caution because once the authorities are involved "it becomes a matter of public record," which can attract media attention.

If a therapist denies the allegations, the situation may be trickier to handle. "An employer simply can't afford to disregard his own employee's position or statements," Antoline says. "The employer has to conduct an investigation, look at the evidence and come to his own conclusions."

Assess the credibility of the client as well as the therapist. With no evidence or witnesses, such cases can be difficult to prove in court. "It's one person's word against another's. The jury decides who to believe," Antoline says. "It's one of the most difficult positions a spa owner can be in. It's not a situation I'd wish on anybody."

Friedman now realizes how lucky she was to lose just two longtime clients rather than her entire business. But she has no doubt what she'll do if she encounters such a situation again at her spa. "The minute someone complains, I'm calling the police," she says. "Then I'd write a letter to the AMTA in case anyone else wants to hire him." ●

**Names have been changed to protect the anonymity of the sources.*

Jenny Hontz is a writer in Los Angeles. Her work has appeared in *The New York Times*, *Newsweek*, *The Washington Post* and *Sunset*. Contact her

E-NETWORKING

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