

The importance of client agreement in kinesiology consulting on the verge of practising alternative medicine

This article is about an acquittal in a criminal case. Basically the provider of applied kinesiology was accused of fraud, of assuming a false title and illegal practising of alternative medicine, but finally was acquitted of all accusations even by petition of the prosecution. The following article is giving advice to providers of psychological services to avoid similar situations in case they do not have a permit according to the Non-Medical Practitioner's Act (Heilpraktikergesetz).

What exactly had happened? A client of the accused had brought a charge against her (fraud, assuming a false title, illegal practising of alternative medicine): The accused had treated him due to multiple allergies during ten sessions, she had drawn therapeutic conclusions on his family system, had forbidden visits to the doctor and moreover had suggested not to keep in touch with his family for the time being.

Beforehand the client had signed an agreement presented by the accused, basically stating "that the kinesiology session refers only to consulting and that it can not substitute a call to a doctor or an alternative practitioner. I will not misunderstand the kinesiology session with a medical treatment."

During investigation pictures of the premises were taken, presenting a nice impression of wellness, and also the firm nameplate could not be mistaken for a doctor's ones. Just a reference to an US academic degree was given. Furthermore other clients were asked about the topics they had discussed with the accused and about the reasons they had consulted her. They all totally agreed about common live topics such as harmony in marriage, conflict management at work, financial problems, etc. At no point the accused had prescribed medicines, neither had taken physically invasive measures nor had given massages and such like. Instead conversation was held and kinesiologic energy work and exercises were practised. As a result the clients had gained important knowledge about their personality and their way of living.

At court it was important that the accused had clearly signalled her clients that her practising is no alternative medicine

Therefore the legal background results from the consideration that in jurisdiction, also by the BGH, the so called theory of impression is represented, its core implying that practising alternative medicine has to be understood as an activity that in a trustworthy way indicates the client the impression of being treated in a professional way, e. g. in terms of diagnosing and treatment of diseases and disabilities (compare § 1 Abs. 2, "Heilpraktikergesetz"). This broadly formulated definition of alternative medicine may on one side have even been more diluted by the theory of impression, but on the other side it draws a – weak – line towards so called charlatans utilising non existing competencies or non-functional appliances. The theory of impression is no longer applicable for the fields of spiritual therapeutics, conversation, shamanic rituals and, as in the present case, for the distinction between consulting and treatment. Thus the case may present many advisable suggestions and presentation strategies concerning daily working life for different groups of providers.

So what can be done by the provider to shatter the theory of impression and to ensure that the client will not develop non-medical false ideas about kind and extent of the offered consulting?

1. The premises should not appear clinically or surgery-like in equipment and colouring.

2. The content of the advisory services should refer to common topics of daily life, e.g. the solving of conflicts, money, relationships, the development of personal strengths, self-awareness, etc.
3. The offered methods should be open for results and they should not be interceding. Physical oriented measures must not be invasive and should rather have an exercising character.
4. That does not imply that any physical contact whatsoever has to be avoid, in fact the purpose of the physical contact is determining and also the question whether it is invasive or not.
5. No way ones own method should be claimed unique, neither at best topped with a demonization of orthodox medicine.
6. Clients with disabilities or physical diseases may anyhow be trained to cope with their physical affection and learn how to integrate it stress free into their lives.
7. The training of stress management methods may be part of the consulting concept.
8. Concerning consulting methods that may also be offered by healthcare professionals with a therapeutic focus it is strongly advised for providers without a non-medical practitioner permission to focus on the live topics mentioned above.
9. Most important: The usage of a suitable client instruction/ fee agreement. The court emphasised its importance! Attention: It should never be presented to the client only with a reference to legal aspects and in reality he/she would be treated anyway etc. Thus the harmony between the consulting offer and the corresponding client instruction is of major importance.

These nine criteria had all been fulfilled by the accused in the given case. Only the client who had brought charge against the accused stated he had completely misunderstood, but in the end could not prove it.

In this respect the given judgment is a consequent continuation of already existing jurisdiction concerning this topic.

For daily working life, one should reflect on ones own focus and develop an independent consulting concept

Important means to convince the court is the presentation of training certificates, proving coaching topics. In our case, the accused could outline that the consulting topics she is offering had been exclusive training content.

Finally the criminal defence even encouraged the accused to present a short kinesiology basic test together with the criminal defence. In subsequence it can be concluded that this presentation finally convinced the court of the consulting activity of the accused.

Due to the accusation of fraud the regional price structure of kinesiology services was also of importance, proving that the accused had a low-priced level so that the assuming of fraud was lapsed.

The accusation of assuming a title could be invalidated by the US American academy law of the corresponding US state.

Rightly the European Registered Association for Kinesiology always represented the point of view that the distinction of consulting and alternative medicine focused on kinesiology is no fraudulent labelling, but realisable also in working life. For further readings the following article by Dr. Werner Weishaupt is recommended: "Beratende Kinesiologie – erlaubnisfrei möglich!" (CO'MED 08/2006, see www.comed-online.de).