



**23 Ways to Protect Your License From
Licensing Board Investigations and
Civil Lawsuits**

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2 CE Credits

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Standard of Care

- ❖ The qualities and conditions which **prevail, or should prevail**, in a **particular** mental health service, and that a reasonable and **prudent** practitioner follows
- ❖ The standard of care is **Context** based!
- ❖ **Beyond** 'no sex' with current clients and 'do not exploit' or 'intentionally harm clients' there is **no one textbook** or set of rules that define the standard of care

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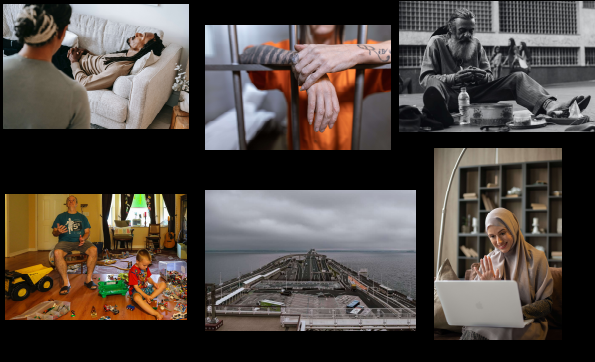
Standard of Care is NOT!

(Not about CYA)

- ❖ A standard of **perfection**
- ❖ An A- standard - It is a C+ standard
- ❖ Free of **mistakes** – Mistakes are human
- ❖ Rigid **risk management** principles of "Don'ts"
- ❖ Following **psychoanalytic** principles
- ❖ Ruled by **majority** (EMDR in the 1990's)
- ❖ **Permanent** or **fixed**
- ❖ Determined by **outcome** or **cost**

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Standard of Care Is **Context** based



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5 Types of Consultations

1. **'Hall-Way Consultation'** or quick phone consultation with a colleague
2. **Posting** (unanimously) on List-Serve, chatrooms, WhatsApp, Signal, Social Networking
3. **Peer-consultation** group (In person or Online)
4. **Risk Management expert** (often free from your insurance company)
5. **Expert: Ethicist - Clinical Expert - Attorney**

Document - Document - Document

Disidentify unless you have a permission to disclose

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23 Ways to Keep Your License

What NOT to do...

1. **Don't drink & Drive**
2. **Don't make any custody recommendations!**
 Watch out for the request & **DON'T** write an 'opinion' letter
 Leave custody recommendation to custody evaluators experts
3. **Don't** have sex with current or recently terminated clients
4. **Don't** breach confidentiality (online & offline)
5. **Don't** engage in complex business dual relationships
6. **Don't** cut corners on completing the TOTAL # of required CE credits for license renewal

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23 Ways to Keep Your License

What NOT to do...

7. Don't get carried away with Social Media.

No Texting... into the night!

- ❖ Texting may be the only way to reach young clients
- ❖ Long trails of texting have become prominent evidence of substandard care in board complaints and civil lawsuits
- ❖ Watch out for the 'Disinhibition Effect'
- ❖ Is texting part of treatment plan or just for administrative purposes?
- ❖ Discuss text content & response-time w/ clients
- ❖ Inform clients that texts are part of the clinical records
- ❖ Add a section in Office Policies regarding texts
- ❖ Some licensing boards require that you retain every text or other digital communications regardless of content

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23 Ways to Keep Your License

What NOT to do...

8. Clients as Facebook Friends?



- ❖ Concerns:
 - ❖ Legal/Ethical: Clients' Privacy & Confidentiality
 - ❖ Digital social dual relationships
 - ❖ Therapists' privacy
- ❖ It depends on what is on the therapists' FB profile
- ❖ Consider creating a professional FB page, separate from your personal profile [or just have a LI profile]
- ❖ It also depends on Client, Therapist & Type of Setting, Therapy, Relationships
- ❖ Some codes of ethics specifically forbid (discourage) accepting clients as FB friends

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23 Ways to Keep Your License

What NOT to do...

9. The YELP Trap



Modern-day consumers post reviews of and evaluations of their therapist on YELP, Angie's List, Better Business Bureau, Consumer Affairs or other reviews sites.

- ❖ Do **NOT** impulsively post a protest to a negative review!!!
- ❖ Consult with experts
- ❖ Ask for favorable recommendations from colleagues (**not** clients)
- ❖ Use the opportunity to establish a Web Presence
- ❖ **Surprise!** 1 negative + 4 positive is better than 5 positive reviews
- ❖ **Rare - Don't:**
 - Don't try to resolve it amicably
 - Don't evaluate for illegal defamation or liable postings

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23 Ways to Keep Your License

10 - 14: When the Board Comes Knocking: When being notified about a board's complaint

What NOT to do:

- 10. **Don't** ignore the board's letter, if you get one
- 11. **Don't** meet w/ board's investigator by yourself
- 12. **Don't** respond to or contact the board without legal rep.
- 13. **Don't** contact the client who filed the complaint
- 14. **Don't** alter the records or create new documents

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23 Ways to Keep Your License

What to do...

- 15. **Attend carefully & Consult** as necessary, on cases that are **difficult, complex** & those involve complex **cultural** issues, suicidal, violent or psychopathic clients and cases that trigger you. **Document the considerations & consultations**
- 16. Get the best possible **board investigation coverage** from your insurance as well as (new) **Cyber Liability Coverage** [Even if you are employed in an agency]
- 17. Keep **GOOD records**. Assume: "What is not in the records did not happen". **It is not:** "Your words against the client's words"
It is "Client's word against your records"

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23 Ways to Keep Your License

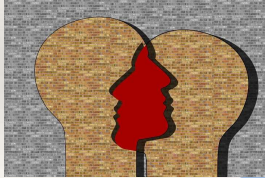
What to do...

- 18. Keep only one set of records
- 19. Be thoughtful and **document** boundary crossings (i.e. Touch, Self Disclosure, Gifts, Bartering, Home Visits, etc.)
- 20. If you get a letter from the board: Select an **experienced attorney** & experienced **expert**
- 21. Contact your **insurance** company right after you get the letter from the board
- 22. Connect-consult with the 'next' therapist, if possible, to remedy the "**Subsequent Therapist Syndrome**"

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23 Ways to Keep Your License

23. You are one **Borderline client away from losing your license . . .**



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(Rare) Civil Malpractice Lawsuits

Common allegations:

- ❖ Suicide or suicide attempt by a patient
- ❖ Sex w/ current or recently terminated clients
- ❖ Failed Business dual relationships w/ clients
- ❖ Confidentiality/Privacy breaches
- ❖ Acting outside scope of expertise (i.e., massage)
- ❖ Digitally over involved - 'Texting into the night', FB, etc.
- ❖ Complex business or personal dual relationships
- ❖ **Malpractice Insurance:** MFT's/LCSW/Counselors: \$300/y
Psychologists: \$1,200/y **VS.** MD's: \$40,000 - \$80,000/y



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Ethical Decision Making

- ❖ Define the problem/question
- ❖ Gather the facts
- ❖ Identify the relevant ethics codes, laws, regulations, etc.
- ❖ Identify several different options and courses of actions and likely outcomes for each course of action
- ❖ Implement each course of action
- ❖ Assess the choice (risk/benefit) of your actions & outcome
- ❖ If necessary modify/change course of action
- ❖ Document, Document and . . . Document

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Boundaries in Therapy

Boundary Violations

Unethical

vs.

Boundary Crossings

Ethical



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Boundary Crossings (Ethical)

- ❖ Appropriate **self-disclosure**
- ❖ Reasonable **gifts**
- ❖ Fair **bartering**
- ❖ Non-sexual, appropriate or comforting **touch**
- ❖ Unavoidable or appropriate **dual relationships**
- ❖ **Out of Office Experiences:**
 - 'Walk & Talk' - Side-by-Side therapy
 - Home visits to a home bound patient
 - Desensitization in treatments of phobia
 - Adventure therapy
 - Animal-assisted therapy



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Unavoidable Boundary Crossings

- ❖ Rural communities
- ❖ Small communities: LGBTQIA, Faith, AA, etc.
- ❖ Universities and Colleges
- ❖ Home office
- ❖ Training institutions
- ❖ Home visit
- ❖ Adventure Therapy
- ❖ Equine Therapy
- ❖ Police & Law Enforcement
- ❖ Military bases & Aircraft carriers

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Digital Boundaries

- ❖ Online self disclosure & Transparency
- ❖ Clients Googling therapists
- ❖ Therapists Googling clients
- ❖ Online Dual Relationships:
 - ❖ **Social Networking** communication via **Facebook**, **LI**, **2nd Life**, etc.
 - ❖ Non-professional **texting** - 'Texting into the night'
- ❖ Digital harassment (i.e., On YELP)

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Boundary Violations



When therapists:

- ❖ Cross the line of decency
- ❖ Intentionally, carelessly or recklessly, violate, exploit or harm clients
- ❖ Operate outside/below the standard of care
- ❖ -> Boundary Violations can be initiated by **therapists** or by **clients**

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Self-Disclosure

- ❖ Verbal **or** Non-Verbal
- ❖ Deliberate **or** Accidental
- ❖ Avoidable **or** Unavoidable
- ❖ In Person **or** Online
- ❖ Initiate by Therapists **or** by Clients
- ❖ Result of Client's Intrusive **or** Accidental Actions

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Online Exposure & Transparency

Consider that anything
you post online
as tattooed on your forehead
- Forever!



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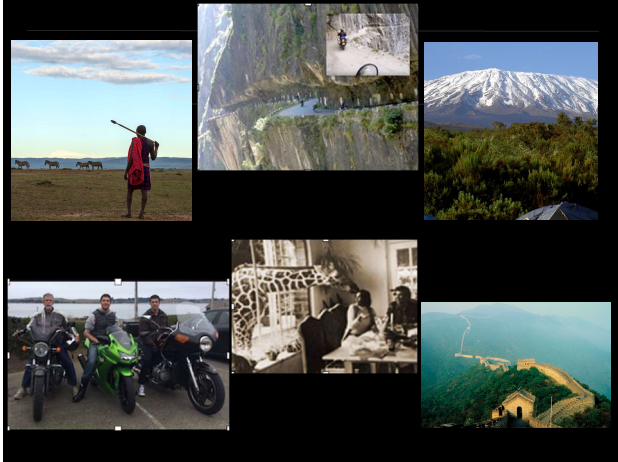


21st century psychotherapists should
expect that modern - informed consumers
will **Google** them **before, during & after**
therapy

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Stay Informed & Safe



'Google' yourself regularly at:
www.duckduckgo.com

Sign up for Google Alerts at
www.google.com/alerts

Use different combinations:
 Dr. Ofer Zur - Ofer Zur - Dr. Zur
 Ofer Zur, Ph.D. - O. Zur - O. Zur, Ph.D. - Zur, Ph.D.

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Clinically Important Therapists' Self-Disclosure with Special Populations

- ❖ LGBTQIA
- ❖ Veterans
- ❖ Parenting
- ❖ Alcohol and Drug Abuse Recovery
- ❖ Spiritual Communities
- ❖ Small Ethnic Community
- ❖ Abused women
- ❖ Online gamers
- ❖ New: 'Compromised' (and other) patients wondering whether the therapist was vaccinated or was tested positively for Covid-19

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Gifts in Psychotherapy



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Types of Gifts



Symbolic



Ritualistic / Customary



Meaningful

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Refusing appropriate clients' gifts Can be detrimental to treatment



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Ethics Codes on “Gifts”

Appropriate gifts are ethical

ACA
CAMFT
NBCC

No Mention of “Gifts”:

APA
NASW

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Touch in Psychotherapy



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Unspoken Western Culture Taboos

- ❖ “Don’t touch the opposite gender!”
- ❖ “Don’t touch yourself!”
- ❖ “Don’t touch strangers!”
- ❖ “Do not touch the elderly, the sick & those who are dying!”
- ❖ “Don’t touch those who are of higher status!”
- ❖ **New World (Covid) Order (?)**:
 - ❖ “Don’t touch/hug those who are **compromised**”
 - ❖ “Don’t touch/hug those who are **not vaccinated**”

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Touch in Psychotherapy

- ❖ Appropriate **vs.** Inappropriate
- ❖ Ethical **vs.** Unethical
- ❖ Sexual **vs.** Non-Sexual
- ❖ Comforting **or** Unsettling
- ❖ **New Meaning: Touch in the Coronavirus Era**
- ❖ Initiated by the therapist or by the Client:
 - ❖ **Inappropriate - Unethical - Illegal Touch:**
Sexual touch - Hostile - Aggressive - Punishing - Violent touch

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Dual or Multiple Relationships

When a therapist has an additional relationship with a client besides the therapeutic relationship

Concurrent **vs.** Sequential

Ethical **vs.** Unethical

Mandated/Required **vs.** Optional

Intense **vs.** Low-key

Types: Social, Digital, Professional, Business, Sexual . . .



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Unavoidable Dual Relationships

&

When clients choose you **because they know you**

- ❖ Small towns & rural communities
- ❖ Small Communities
 - ❖ Churches, LGBT, Synagogs, Gyms, Aikido
- ❖ 12-Step Groups: AA, NA
- ❖ Universities' & Colleges' campuses
- ❖ Military campuses & Aircraft carriers

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Online/Digital Dual Relationships

Linked in



❖ FB - Instagram - 2nd life - LI- Pinterest

Pinterest



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None of the code of ethics
view all DR as unethical



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To Google or not to Google Our Clients That is the question . . .

- ❖ Suicidal client in coma in the hospital
- ❖ Home office
- ❖ Home visit
- ❖ Is the client delusional or a Fortune-500 executive?
- ❖ Special populations: Forensic (history, records)



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Sample of an Informed Consent section:

Internet Searches:

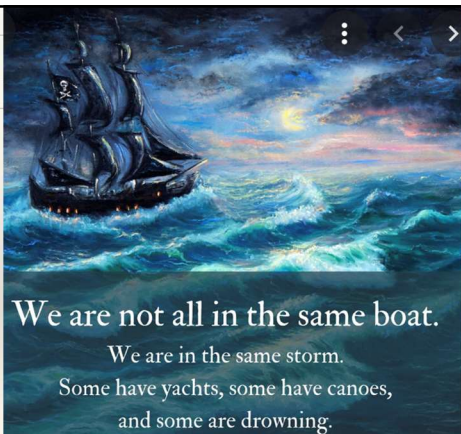
At times Xxx may conduct a web search on her/his clients before the beginning of therapy or during therapy. Dr. XXX will inform you if he/she conducted such search. If you have concerns or questions regarding this practice, please discuss it with Dr. xxx

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NEW ERA: PANDEMIC WORLD ORDER



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Damian Barr

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Pandemic Impact on Psychotherapy June 2021

- ❖ **Telemental health** presents a new **dominant** mode of **delivering Therapy**.
- ❖ Significantly - **temporarily** more flexibility and ease in practicing **across states' lines** (24 states are lined up for reciprocity for psych.)
 - ❖ **Hope: Finally, seriously re-thinking states' licensure laws**
- ❖ **Insurance** companies, including medicare, increased (**for now**) **reimbursement** for telemental health (phone, video, etc)
- ❖ HIPAA rules were **softened**: **Temporarily** providers may **now** use systems that are not fully **HIPAA compliant** to provide telemedicine
- ❖ Next - Upcoming: Ready or not: AI & Text-based therapy, & Telemental Health apps like **TalkSpace** or **BetterHelp**

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Pandemic Tsunami of Mental Health

- ❖ Depression, Anxiety
- ❖ Suicide Attempts
- ❖ Alcohol & Substance abuse
- ❖ Violent Crimes
- ❖ Domestic violence: *"Pandemic within the pandemic"*
- ❖ ER Visits
- ❖ Concern: The impact of **prolonged** stress, exacerbated by isolation, fears, grief & trauma,
- ❖ Zoom Fatigue

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In-Person Therapy?

- Review the physical and mental health **risks - Benefit**
- Determine, clinically, whether an in-person visit is necessary
- Take steps to **reduce the spread** of COVID-19 in your office
- Implement policies that protect employees
- Psychologists can decline to see patients face-to-face, if they or their **household members have health concerns**
- Decisions related to providing in-person services are made by factoring in **possible risks for specific patients, clinicians and staff** and are made on a case-by-case basis
- Although it may be tempting to **require patients to be vaccinated** before seeing them in person, this is a **legally untested area**. (Some people have valid medical reasons for not getting vaccinated)
- Some **Clients - Disorders - Therapists** are not suitable for telemental health

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More Ethical Consideration in the Post Coronavirus Era

- ❖ **If not seeing patients in person:**
 - ❖ Appropriate **disclosure**
 - ❖ **Clinical & legal 'justification'**
 - ❖ If clinically appropriate, offer **telemental health**
 - ❖ **Referrals**
- ❖ **New Complexities: Vaccine - Masks - Temperature - Sanitation**
 - ❖ **Vaccination:** Discuss with client? Encourage/Discourage
 - ❖ **Self-Disclosure:** Vaccination, Exposure, Contraction?
 - ❖ **Masks & Social Distancing** before and/or after vaccination?
 - ❖ **Taking Temperature?**
 - ❖ **Sanitization:** Office, Waiting Room, Bathrooms
- ❖ **New Office Policies & Informed Consent to Treatment**
 - ❖ Check with professional organization: CAMFT, APA, ACA, NASW
- ❖ **Staying current on rules, regulations and ever-evolving standards** as applied to telemental health: CDC - States' Laws

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Advantages of TeleMental Health Over In-Person

- ❖ **Accessibility:** Rural, Aircraft carrier, Prisons
- ❖ **Availability** of treaters and experts from all over (the world)
- ❖ **Cost:** No need for fancy office, driving/commute & parking
- ❖ **Flexibility:** Duration of session, Time of sessions & # of Participants in sessions (from different locations)
- ❖ Patients and Clinicians can be **anywhere & anytime**
- ❖ **Dis-inhibition effect:** Higher degree of anonymity & privacy can **increase disclosure**

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ReCap:

Main Concerns - Challenges in TeleMental Health

- ❖ **Across State Lines**
- ❖ **Verification** of clients' identity, age, location
- ❖ **Emergencies - Concerns:**
 - ❖ How to respond to **emergencies** in an unfamiliar location
 - ❖ 911 is **local**, not a national system
 - ❖ **Duty to warn** - Standards are different in different states (when practicing across state lines)
 - ❖ Observe children or older **compromised** adults with visible bruises
- ❖ **Clients, Therapists & Disorders unsuitable** for telemental health
- ❖ Privacy - **Confidentiality** - Security: HIPAA & States' Laws
- ❖ **Concerns/Missing/Complex:** Internet disruptions, Privacy, Physical touch, Gifts, Body language
- ❖ **New terminology:** Zoom Fatigue, Social Distancing, **PCSD:** Post-Covid Stress Dis.

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Next Webinar w/ Dr. Zur

GoodTherapy®

Myths & Faulty Beliefs about the Standard of Care in Psychotherapy & Counseling

8/13/21, Friday, 9am-10am, PST
1 hr (1 CE Credit), Online/WebEx Webinar.

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**The end
or just
the beginning?**



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Share and Reflect on your Personal Stories to Gain Life-Changing Insights

My passion is to invite people to reflect on their own life choices, cultural assumptions, belief systems and biases on 8 different aspects of life, as I have been doing for decades now, reaping deep rewards and meaningful insights.

I invite you to FREE-ly join this (inner or "in-sights") ride! Take some time to reflect on your own life junctures and choices, and share your significant 'Aha' moments or insights. We all become more conscious, enlightened and aware of our shared human experience by reflecting, discovering, and sharing.

8 Live Topics Contemplate & Contribute

-  CORONAVIRUS SPEAKS
-  BURN AWAY
-  ROLE MODEL
-  RACISM
-  MORAL JUNCTIONS
-  FURRY FRIENDS
-  HOPE
-  NEW YEAR



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