

**STANDARD OF CARE IN MENTAL HEALTH SERVICES:
ETHICAL, CLINICAL & BOUNDARY CONSIDERATIONS**

June 1st & 2nd 2021: (9am – Noon)

Presenter: Dr. Ofer Zur – www.drzur.com
6 hrs - 6 CE Credits

LADMH

**Dr. Zur's
Brief Bio**

Ofer Zur, Ph.D. lives in northern CA and founded the **Zur Institute** 25 years ago, which provides over 150 online CE courses. He is a licensed psychologist, instructor, and forensic and ethics consultant and expert witness on the standard of care and boundary issues in psychotherapy. Dr. Zur has authored or co-authored five books and over 70 published articles on ethics and related topics. His ***Boundaries in Psychotherapy*** book was published by APA Books in 2007 and his edited book ***Multiple Relationships in Psychotherapy & Counseling: Unavoidable, Common, and Mandatory Dual Relationships Between Clients & Therapists*** was published in 2017 by Routledge.

His writing and teaching in the U.S. and abroad focus on **ethics, critical thinking, boundaries**, dual relationships, managed-care-free private practices, the psychology of **victims**, the psychology of **war**, and the psychology of **gender**.

You can learn more about Dr. Zur at www.drzur.com.

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CONSULTING/FORENSICS PICTORIAL BIO MOST POPULAR ARTICLES TEACHING COMPLETE ARCHIVE

Influential educator, psychologist and critical thinker serving the general public and mental health field for over 30 years

Dr. Ofer Zur welcomes you to find out more about his ethical-consultation and forensic services, his teaching/representing his most popular articles, audios and



Disclosure

The views expressed in this presentation are those of the speaker and do not necessarily represent the views, policies, and positions of LADMH.







What the Standard of care **is**

- ❖ The qualities and conditions which prevail, or should prevail, in a particular mental health service, and that a reasonable and prudent practitioner follows
- ❖ 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

Standard of care **is not**

- ❖ 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
- ❖ Permanent or fixed
- ❖ Determined by outcome or cost

Standard of Care is Based on:

- Statutes - Laws
- Licensing Boards' regulations
- Case law
- Ethics codes (NASW, APA, ACA, Etc.)
- Department/Agency Regulations (when applied)
- Consensus among professionals (general)
- Consensus in the community/setting/context (specific)
- The "respected minority" doctrine (new approaches/methodologies)

Good Records are the Best Support that you operated within the standard of care

• In extreme situations:

- It is not your word against the client's word - But it is client's word against your records
- If it is not in the record - it is not likely to have taken place



Scope of Practice

• Determined by:

- Standard of care
- Education
- Training
- General principles, such as:
 - Prescription (for MD and NP)
 - Standard testing (generally for Ph.D. psychologists)



Background & Support of Compliance with One's Scope of Practice

- Education: CE, classes in grad. school, workshops
- Reading, watching videos of experts
- Supervised experience
- Consultation with colleagues or experts

Support of Compliance with the SOC

- **Records:**
 - What, how & Why you did or didn't do
 - Therapeutic approach (i.e., EMDR, CBT, Family Therapy, Multi-Disciplinary)
 - Ethical reasons- Boundary crossings (i.e., why self-disclosure, touch, home visit, Interventions outside the office)
 - Legal & Ethical Compliance

Ethical Decision Making

- Laws - Codes of Ethics - SOC
- Client
- Context
- Therapist
- Therapist-Client Relationships



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

The 5 Bins:

Differentiate Between

Clinical: Orientations, Assessment . . .

Ethical: Codes of Ethics, Scope, Avoid harm, DR, Gifts . . .

Legal: Laws/Regulations: Reporting, Confidentiality, HIPAA

Risk Management: Reduce risk & Liability

Socio-Cultural Context: Culturally responsive

Standard of Care Myths

Faulty Beliefs in Psychotherapy, Social Work, & Counseling

Myth #1

Non-Sexual, casual touch, is often the first step to sexual touch

- ❖ The US has a 'touch phobic' culture
- ❖ Most cultures do not hold the (paranoid) association between touch and sex
- ❖ **Research findings: The # of times two people sharing coffee in a restaurant touch each other, per hour, in:**

London:	0
Florida	2
Jerusalem	100
Paris	110
San Juan	180



Myth #2

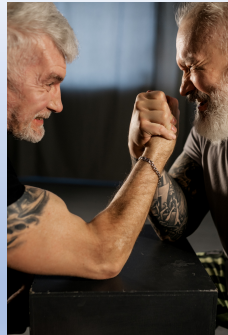
- ❖ **The Inherent Power differential**
- ❖ **Once a client—Always a client**
- ❖ **Therapists' power in perpetuity**

Power Differential

- Indeed - High Power differential:
- ☐ Court appointed forensic Psychologists
 - ☐ Sanity to stand trial evaluators
 - ☐ Custody evaluators
 - ☐ Fitness to duty in military, police, etc.

- Clients who, often, may be more powerful than their psychotherapists:
- ☐ Psychopathic - Manipulating
 - ☐ High powered or wealthy clients
 - ☐ Physically attractive individuals
 - ☐ Highly educated and experienced psychotherapists

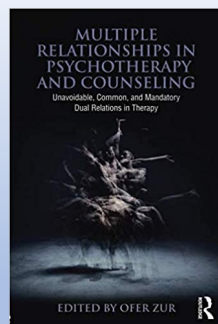
- On the power of BDP:
- ☐ "You are one Borderline away from losing your license"



Myth #3

Dual Relationships (DR) are unethical

- ❖ **Mandatory DR** (Split Loyalties): Military & Prisons
- ❖ **Unavoidable social & business DR:** Rural & Small Communities
- ❖ **Common DR:** AA, NA, LGBTQ, Spiritual Communities, University Campuses
- ❖ **Concurrent DR vs. Sequential DR**
- ❖ **Sexual DR** with current or recently terminated client always unethical



Myth #4**Don't ever blame the victim****Politically incorrect:**

- ❖ Rethinking victims' responsibility
- ❖ Not all victims are created equal
- ❖ Rethinking "Don't blame the victim"
- ❖ Assign and evaluate for a full range of responsibility to victims, from **no** responsibility to **full** responsibility



Myth #5**The myth of the slippery slope:
Boundary crossing is the first
step towards boundary
violation**

The slippery slope idea of the inevitability of ethical boundary crossings, ending up in boundary violations, is paranoid and unfounded



Myth #6**Malpractice lawsuits against therapists are common****Annual Cost of Malpractice Insurance** (Notice the difference):

- ❖ MFT's – LCSW's – M.H. Counselors: \$400/year –
Psychologists: \$1,400/year
- ❖ Cardiologists – Obstetrics – Anesthesiologists :
\$30,000/year – \$90,000/year



Myth #7

It is never ethical for a therapist to be naked with a client

Think **CONTEXT**:

- ❖ Locker room of a small town gym
- ❖ Nudist beaches - Hot tubs @ Esalen, CA

Context:

Client – Setting – Therapist
Orientation - Relationships

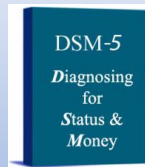


Myth #8

The DSM is a scientifically valid, and reliable document

- ❖ Homosexuality was listed as a mental disorder in the DSM until 1974
- ❖ 1974 Gay rights activists demonstrated in front of the American Psychiatric Association (APA) Convention in Chicago
- ❖ The APA's 1974 vote showed 5,854 members supporting and 3,810 opposing the disorder's removal from the manual.
- ❖ Ever since, homosexuality has not been regarded as a mental illness.

How scientific is that???



23 Tips of Operating within the Standard of Care and . . . (23 Ways to Keep & protect Your License)

Operating within the Standard of Care and . . . 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"
3. **Don't** have sex with current or recently terminated clients
4. **Don't** breach confidentiality (online & offline)
5. **Don't** engage in business dual relationships
6. **Don't** turn clients' debt over to a collection agency

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
- 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

Operating within the Standard of Care

What NOT to do...

8. Clients as Facebook Friends?



- Legal/Ethical: Clients' Privacy & Confidentiality
- Concern with digital social dual relationships
- Therapists' privacy
- It depends on what is on the therapists' FB profile
- Consider creating a professional page, separate from your personal profile
- It also depends on Client, Therapist & Type of Setting, Therapy, Relationships
- ACA & NASW codes of ethics specifically forbid (discourage) accepting clients as FB friends

Operating within the Standard of Care

9. The YELP Trap

What NOT to do...



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!!!
- 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
- **Rare:**
 - Don't try to resolve it amicably
 - Don't evaluate for illegal defamation or liable postings

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.

Operating within the Standard of Care

When the Board Comes Knocking

When facing 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

Operating within the Standard of Care

What to do...

15. **Consult** with experts on cases that are **difficult, complex** & those involve suicidal, violent or psychopathic clients and about **cases that trigger you** — **Document the 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"

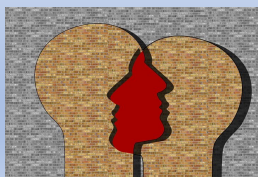
23 Ways to Operate within the SOC

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 with the 'next' therapist, if possible, to remedy the "**Subsequent Therapist Syndrome**"

Operating within the Standard of Care 23 Ways to Keep Your License

23. You are one **Borderline** away from
loosing your license . . .



Civil Malpractice Lawsuits



Common allegations:

- ❖ Suicide or suicide attempt by a patients
- ❖ Sex w/ current or recently terminated clients
- ❖ Failed Business dual relationships w/ clients
- ❖ Confidentiality/Privacy breaches
- ❖ Acting outside scope of expertise
- ❖ Over involved - FB or in-person dual relationships

Malpractice Insurance: MFT's: \$400/y vs. MD's: \$50,000+/y

Boundaries in Therapy

Boundary Violations

Unethical

vs.

Boundary Crossings

Ethical



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



Boundary Crossings that are Unavoidable

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

Digital Boundaries

- Online self disclosure & Transparency
- Clients Googling therapists
- Therapists Googling clients
- Online Dual Relationships:
 - Communication via Facebook, LI, 2nd Life, etc.
 - Social Networking with clients
- Digital harassment (i.e., On YELP)

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**

Self-Disclosure

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

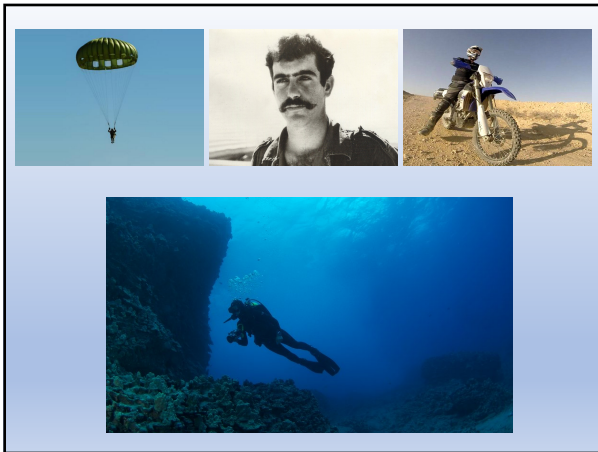
Online Exposure & Transparency

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





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







Clinically Important Therapists' Self-Disclosure with Special Populations

- LGBTIQIA
- 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

Unavoidable Extensive Self-Disclosure

- Online postings by others
- Home Office or Telemental Health from 'home' Office
- Rural communities
- Small ethnic, spiritual, LGBTQIA, 12 Step & self help programs
- Military bases & Aircraft carriers
- Disabled communities
- Sports Psychologists

Gifts in Psychotherapy



Types of Gifts



Symbolic



Ritualistic / Customary



Meaningful

Refusing appropriate clients' gifts Can be detrimental to treatment



Ethics Codes on "Gifts"

Appropriate gifts are ethical

CAMFT
ACA
NBCC

No Mention of gifts:

APA
NASW

Touch in Psychotherapy



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**"

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

Dual or Multiple Relationships

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

Concurrent **vs.** Sequential

Ethical **vs.** Unethical

Intense **vs.** Low-key

Types: Social, FB, professional, business, sexual . . .



Unavoidable Dual Relationships

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

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

Online/Digital Dual Relationships

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



None of the code of ethics,
views all DR as unethical



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

- Suicidal client in coma in the hospital
- Dangerous/litigious client
- Home office
- Home visit
- Is the client delusional or a Fortune-500 executive?
- Special populations: Forensic (history, records, etc.)
- (Digital Native -Young therapists: "Forgivable sin")



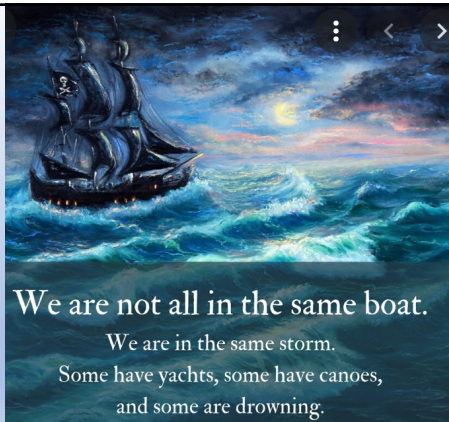
Sample of an Informed Consent section:

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

NEW ERA: PANDEMIC WORLD ORDER





Damian Barr

Pandemic Impact on Psychotherapy

- **Telemental health** presents a new **dominant** mode of **delivering Therapy**.
- **Significantly** - **temporarily** more flexibility and ease in practicing **across states' lines**:
 - **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

Impact of the Pandemic: Tsunami of Mental Health - Increase

- Depression, Anxiety - 40% (up from 10%) adults
- Suicide Attempts - 25% increase
- Alcohol & Substance abuse - 25% increase
- Violent Crimes
- Domestic violence: "Pandemic within the pandemic"
- ER Visits - 35% Increase
- Concern: The impact of **prolonged** stress, exacerbated by isolation, fears, grief & trauma

Coronavirus - New World Order:

- **Traumatized - stressed - quarantined - isolated therapists** are treating equally **stressed - quarantined isolated - traumatized clients**
- Ready or not: Most psychotherapists **shifted** primarily, or entirely, to **telemental health** during the peak of the pandemic
- TeleMental Health is the **most common** telehealth (**medical**) procedure
- Current most popular: Hybrid model: In person & Online
- **Next - Upcoming:** Ready or not: AI & Text-based therapy, Apps like **TalkSpace** or **BetterHelp**

New Ethical Consideration in the Coronavirus Era

- **If not seeing patients in person:**
 - Appropriate **disclosure**
 - 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: CAMFT - APA - CDC - States' Laws

Pandemic Introduced New Clinical & Ethical Concerns:

Some

Clients - Disorders - Therapists
are not suitable for telemental health

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

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

