

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

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3 CE Credits
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DR. OFER ZUR

CONSULTING/FORENSIC PICTORIAL ID MOST POPULAR ARTICLES TRAINING COMPLETE RECORDS

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 [best-selling presentation](#), his most popular articles, articles and



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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 **Context** based

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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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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

Dis-Identify unless you have a permission to disclose

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23 Ways to Keep Your License

What NOT to do...

- 1. Don't make any custody recommendations!**
 Watch out for the request & **DON'T** write an 'opinion' letter
 Leave custody recommendation to custody evaluators experts
- 2. Don't drink & Drive**
- 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 **hundreds or thousands of texts** 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
 - Better: Have a (professional) LI profile
- ❖ It also depends on context:
 - ❖ 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. a. Get the best possible **board investigation coverage** from your insurance.
b. Check on (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** (ethical) 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 Personality Disorder 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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Coaching Vs. Psychotherapy

*If your somatic work does not fit under your psychotherapy/counseling/social work license
Sorry - Not in Handout*

- ❖ Establish a coaching practice **separate** from your licensed practice
- ❖ Do not mention your psychotherapy license or **license #** in your coaching web-page or coaching documents
- ❖ Have the following **2 statements** in your **Coaching Informed Consent** (to be reviewed and signed by clients):
 - ❖ Coaching is **NOT** psychotherapy or counseling: It does **not** treat mental disorders
 - ❖ If I detect mental illness I will **REFER** you to a license mental health professional


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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.
 - ❖ **"Texting into the night":** Non-professional **texting & e-mails**
- ❖ 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

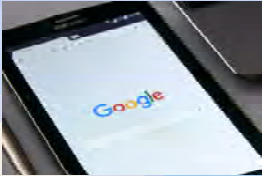
23

Online Exposure & Transparency

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




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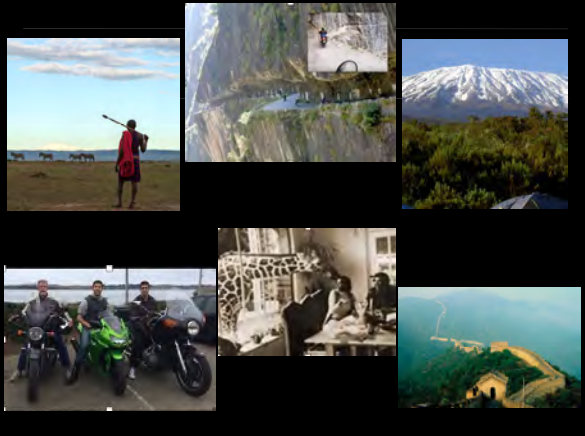


21st century psychotherapists should expect that modern - informed consumers will **Google** them **before, during & after** therapy

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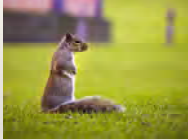


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Stay Informed & Safe



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**

- ❖ LGBTIQA
- ❖ Veterans
- ❖ Parenting
- ❖ Alcohol and Drug Abuse Recovery
- ❖ Spiritual Communities
- ❖ Small Ethnic Community
- ❖ Abused women
- ❖ Online gamers
- ❖ **New:** Patients wondering whether the therapist or therapist's family members were vaccinated, tested positively for Covid-19 or were sick

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Gifts in Psychotherapy



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Poll Question

Have you ever been given a gift by a client?

Yes

No

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Poll Question


Have you given a gift to a client?

❖ Yes

❖ No

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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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Poll Question: On Touch

Have you ever hugged a client for more than a few seconds or held a client's hand for more than a few seconds?

- ❖ Yes
- ❖ No

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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 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
- ❖ Initiated by the therapist **or** by the Client:
- ❖ **Inappropriate - Unethical - Illegal Touch:**
Sexual touch - Hostile - Aggressive - Punishing - Violent touch
- ❖ **New (cautious) meaning for touch in the Coronavirus Era**

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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
 Avoidable **vs.** Unavoidable
 Mandated/Required **vs.** Optional
 Intense/Complex **vs.** Low-key/Simple

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



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Poll Question

Have you had Dual or Multiple relationships with clients?

- ❖ Never
- ❖ Seldom - Rarely
- ❖ With some
- ❖ With many

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Unavoidable Dual Relationships

- ❖ **When clients choose you because there are only a few or no choices**
 - ❖ Rural - Remote - Small Communities
- ❖ **When clients choose you because they know you**
 - ❖ Small Communities within large communities
 - ❖ Churches, LGBT, Synagogs, Gyms, Aikido Dojo's
 - ❖ 12-Step Groups: AA, NA, Alanon
 - ❖ Universities' & Colleges' campuses
- ❖ **Mandated Dual Loyalties:**
 - ❖ Military campuses & Aircraft carriers
 - ❖ Prison & Jails

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Online/Digital Dual Relationships



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



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None of the code of ethics
view all DR as unethical



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Poll Question




Have you ever Googled your clients?

- ❖ Yes
- ❖ No

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

- ❖ Suicidal client in coma in the hospital
- ❖ Safety:
 - ❖ 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:

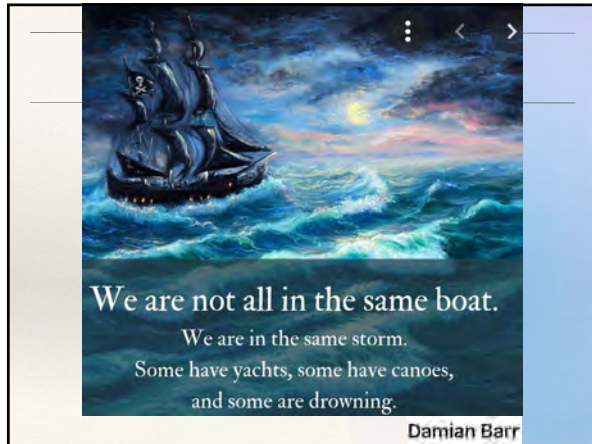
Internet Searches:
At times Xxx may conduct a web search on her/his clients before the beginning of therapy or during therapy. Dr. XXX will inform you if he/she conducted such search. If you have concerns or questions regarding this practice, please discuss it with Dr. xxx

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**NEW ERA:
PANDEMIC WORLD ORDER**



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Poll Question

What % of your practice, these days is Online Therapy/ Telemental Health/ TelePsychology?

- ❖ 100%
- ❖ 50%
- ❖ 25%
- ❖ None

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Pandemic Impact on Psychotherapy
 July 2021

- ❖ **Telemental health** the new **dominant** mode of **delivering Therapy**.
- ❖ **New Model: Hybrid**
- ❖ **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
- ❖ **New:** Telemental Health apps: **TalkSpace & BetterHelp**
 - ❖ **Upcoming:** (Ready or not) AI & Text-based therapy

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Pandemic Tsunami of Mental Health

- ❖ Depression, Anxiety
- ❖ Suicide & Suicide Attempts
- ❖ Alcohol & Substance abuse
- ❖ Violent Crimes
- ❖ Domestic violence: *"Pandemic within the pandemic"*
- ❖ Dying alone! Tormented loved ones - Life long complicated grief
- ❖ Birth rate plummeted
- ❖ **PCSD: Post Corona Stress Disorder**
 - ❖ The impact of **prolonged** stress, exacerbated by isolation, fears, grief & trauma
- ❖ Zoom Fatigue

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Duty to Warn - Duty to Protect

❖ **A client tells you, the therapist, that she has tested positive for COVID-19 but will continue to go to work as a nurse at the local clinic and will neither tell her staff and colleagues at the clinic nor her elderly parents who live with her, nor will she keep her young children at home for a couple of weeks, nor will she tell the school staff that she has tested positive.**



❖ Do you have a **duty to warn, duty to protect** or duty to inform clients and staff in the clinic, parents at home or her children's school personnel.

❖ **?**

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Main Concerns - Challenges in TeleMental Health

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

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Zoom Fatigue

- An unnatural high amount of eye contact
- Seeing ourselves too long (Unless we select "hide self view")
- To stay centered for the camera we don't move much
- We strain to pick up non-verbal cues
- Lots of things are done more easily in email or walking around with a cell phone
- Back to back Zoom meetings: No time to digest, reflect, share ideas, shift gears . . . hang out around the water fountain

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Ethical Consideration in the Post Coronavirus Era

- ◆ **New Complexities: Vaccine - Masks - Temperature - Sanitation**
 - ◆ **Vaccination:** Discuss with client? Encourage? Discourage? Demand proof?
 - ◆ **Therapists' self-Disclosure:** Vaccination? Exposure? Contraction?
 - ◆ **Masks & Social Distancing:** before and/or after vaccination?
 - ◆ **Taking Temperature?**
 - ◆ **Sanitization:** Office, Waiting Room, Bathrooms (doors/chairs/etc)
- ◆ **If not seeing patients in person - Only Telemental Health**
 - ◆ Appropriate disclosure - **New Office Policies**
 - ◆ Clinical & legal 'justification'
 - ◆ If clinically appropriate, offer **telemental health**
 - ◆ **Referrals**
- ◆ **Add to Office Policies & Informed Consent to Treatment**
 - ◆ Vaccinations, Masks, etc.
 - ◆ 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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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
- 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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Advantages of TeleMental Health Over In-Person

- ❖ **Accessibility:** Rural, Suburbs, 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, in-visibility & privacy can **significantly increase disclosure**

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