

Ethical and Legal Issues in Supervision: Essentials for Effective Supervisors



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What is Supervision?



A distinct professional activity in which education and training aimed at developing science-informed practice are facilitated through a collaborative interpersonal process. It involves observation, evaluation, feedback, the facilitation of supervisee self-assessment, and the acquisition of knowledge and skills by instruction, modeling, and mutual problem solving...Supervision ensures that clinical consultation is conducted in a competent manner in which ethical standards, legal prescriptions, and professional practices are used to promote and protect the welfare of the client, the profession, and the society at large (Falender and Shafranske, 2004, p. 3)

What is Supervision?



An intervention provided by a more senior member of a profession to a more junior member or members of that same profession. This relationship is evaluative; extends over time; and has the simultaneous purposes of enhancing the professional functioning of the more junior person(s), monitoring the quality of professional services offered to the clients that she/he, or they see, and serving as a gatekeeper for those who are to enter the particular profession (Bernard & Goodyear, 2004, p. 8).

Understanding Supervision



- Clinical supervision is the mental health professions' "signature pedagogy" (Goodyear, 2007, p. 273).
- Romans, Boswell, Carlozzi, and Ferguson (1995) have reported that clinical supervision "is a central component in the training of graduate students in clinical, counseling, and school psychology" (p. 407).
- Differentiating Supervision and Consultation:
 - Licensure status
 - Responsibility
 - Accountability
 - Overarching obligations
 - Obligations for the recipient

Key Ethical Issues



- Informed Consent
- Competence
- Protection of the Public
- Accurate Representation to the Public
- Confidentiality
- Documentation and Record Keeping
- Boundary Issues and Multiple Relationships
- Diversity
- Evaluation and Feedback
- Gatekeeper Functions
- Legal Liability and Responsibility

Relevant APA Ethics Code Standards



- **2.01 Boundaries of Competence**
- **2.03 Maintaining Competence**
- **2.05 Delegation of Work to Others**
- **2.06 Personal Problems and Conflicts**
- **3.04 Avoiding Harm**
- **3.05 Multiple Relationships**
- **3.06 Conflict of Interest**
- **3.08 Exploitative Relationships**
- **3.10 Informed Consent**
- **4.01 Maintaining Confidentiality**
- **4.02 Discussing the Limits of Confidentiality**
- **4.03 Recording**

APA Ethics Code (cont.)



- **5.01 Avoidance of False or Deceptive Statements**
- **6.01 Documentation of Professional and Scientific Work and Maintenance of Records**
- **6.04 Fees and Financial Arrangements**
- **6.06 Accuracy in Reports to Payors and Funding Sources**
- **7.06 Assessing Student and Supervisee Performance**
- **7.07 Sexual Relationships With Students and Supervisees**

Relevant Standards of the NASW Code of Ethics



- **1.03 Informed Consent**
- **1.04 Competence**
- **1.05 Cultural Competence and Social Diversity**
- **1.06 Conflicts of Interest**
- **1.07 Privacy and Confidentiality**
- **1.09 Sexual Relationships**
- **3.01 Supervision and Consultation**
- **3.02 Education and Training**
- **3.03 Performance Evaluation**
- **3.04 Client Records**
- **3.05 Billing**
- **4.02 Discrimination**
- **4.04 Dishonesty, Fraud, and Deception**
- **4.05 Impairment**
- **4.06 Misrepresentation**

Informed Consent to Supervision



- Informed Consent Between Supervisor and Supervisee
- Informed Consent Between Supervisee and Client
- Purposes of Informed Consent
- Requirements for Consent to be Valid
- Issues to Include in Informed Consent Agreements
- The Supervision Contract

Why Informed Consent?



- The process of sharing information with patients that is essential to their ability to make rational choices among multiple options” (Beahrs & Gutheil, 2001)
- Intended to protect the welfare of clients by offering them the opportunity to make free and informed choices (Corrigan, 2003).
- Provides the information needed for individuals to make an informed decision about whether or not to participate in a professional relationship.
- It serves as a means of sharing decision-making power in the professional relationship (Meisel et al., 1977).
- It promotes autonomy and self-determination, helps minimize the risk of exploitation and harm, fosters rational decision making, and enhances the working alliance (Snyder & Barnett, 2006).

Requirements of Valid Informed Consent



- It is given voluntarily
- The individual is competent to consent (legally as well as cognitively/emotionally)
- We actively ensure the individual's understanding of what s/he is agreeing to
- It is documented

- An ongoing process, not a singular event
- Provided verbally and in writing

Elements of Informed Consent to Supervision



- The number and types of clients to be supervised
- The number of hours of supervision to be provided
- When and where the sessions will occur
- The frequency and length of supervision sessions
- Appropriate reasons for cancelling supervision sessions and the mechanism for doing so
- Fees and financial arrangements
- Charges for missed or cancelled sessions
- The method of supervision, preparation required or expected
- Limits of decision making by supervisee and responsibility of supervisor for delegating tasks

Elements (Cont.)



- Expectations for any special requirements such as audio or video taping
- A detailed timetable for informal and formal written evaluations, evaluation criteria, and standards to be met
- A clear statement of the limits of confidentiality in the supervisory relationship
- Documentation requirements
- Use of outside consultation
- Emergency contact information
- Potential reasons and mechanism for terminating the supervisory relationship
- Procedures for resolving disagreements (Barnett, 1991)

Contracting for Supervision



- Ethics codes for psychologists require that informed consent be obtained from supervisees as well as other recipients of psychological services. This can be accomplished with a supervision contract. The following are examples of the types of information that should be included.
- Limits of confidentiality in supervision must be described, and each exception listed. This list should include those exceptions affecting psychotherapy relationships, (i.e., confidentiality will be breached if there is a court order; abuse or neglect of a child or vulnerable adult; potential suicide, homicide or threat of physical harm.
- Additionally, supervisees must be made aware of any requirements to report unethical behavior that may apply to them. These requirements will depend on which licensing board or boards govern their professional behavior.

Contracting (cont.)



- Confidentiality policies must be established regarding information about both clients and supervisees. For example, the supervisor and supervisee will need to determine whether identifying information about clients will be used in the supervision. If so, clients must be informed that such information will be discussed in supervision, and must consent to participation in therapy with this understanding. If not, supervisees must be advised of their responsibility to protect the identities of clients they discuss.
- The policy should also include a statement indicating that the supervisor will keep confidential any information obtained in the context of supervision. If information will be shared with other staff members at the agency, with college faculty (if the supervisee is a student), or others, supervisees must be so informed at the outset.

Contracting (cont.)



- Supervisory contracts should also include an agreement that:
- the supervisee will keep the supervisor informed about all significant aspects of his/her client's treatment including suicidality, conflicts between the supervisee and a client, and accusations of unethical behavior, as well as personal factors that could potentially impair the supervisee's effectiveness;
- the supervisor has the final say in treatment decisions because he/she is legally responsible for the management of the case.

- Consultation contracts should include information about the limits of confidentiality, but need not contain a mandate about the types of client issues that must be discussed in the consultation. Additionally, a statement clarifying that responsibility for treatment decisions rests solely with the consultee, and not the consultant, should be included.
- (Janet Thomas, St. Paul Minnesota, 2006)

Competence



- The Supervisor's Competence
 - Competence in Supervision
 - Competence in the areas being supervised
 - Sub-contracting supervision on areas outside of the supervisor's expertise
- Training to be a Supervisor vs. On-the-job training

What is Competence?



- Knowledge
- Skills
- Attitudes and Values
- And the Ability to Implement them Effectively, to include professional judgment
- The habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served based on habits of mind, including attentiveness, critical curiosity, self-awareness, and presence (Epstein & Hundert, 2002, p. 227).

The Cube Model of Competence



- Foundational Competencies: scientific knowledge and methods, reflective practice and self-assessment, ethical and legal standards, awareness of diversity factors, the ability to relate to others in an effective manner, and knowledge of concepts in closely related fields (Rodolfa et. al., 2005).
- Functional Competencies: assessment, diagnosis, case conceptualizations, modes of intervention, consultation, research, supervision, and management (Rodolfa et. al., 2005).
- Stages of Professional Development: graduate level education, internship, postdoctoral training, and continuing education (Rodolfa et. al., 2005).

Relevant Competencies



- **Core Competencies** include the following areas: psychological assessment, intervention, consultation and interprofessional collaboration, supervision, professional development, and core values as related to ethical conduct principles (Kaslow, 2004).
- **Specialty Competencies** are distinctive to specific areas of practice. They are built on the foundation of core competencies through the attainment of advanced attitudes, knowledge, and skills for a distinctive area of practice (Kaslow, 2004).
- Generic Competencies, Specialty Competencies, Technical Competencies.

Assessing Supervisee Competence



- Prior to the supervisee treating any clients the following may occur:
- Review of transcripts or other academic records, letters of recommendation, c.v., past training experiences, list of tests administered and scored, list of types of clients treated and modalities used.
- Interview/discussion with the supervisee.
- Informal assessment of supervisee competence.
- Formal assessment of supervisee competence; verbal, written, practical.

Protection of the Public: Paranoia vs. Trust



- How closely to supervise?
- Level of intensity of supervision?
- Taking a developmental perspective:
 - Supervisee observes supervisor provide treatment followed by analysis and discussion.
 - Supervisor and supervisee provide treatment together followed by analysis and discussion.
 - Supervisee provides treatment while observed by supervisor – bug in the ear, call-in, etc.

Paranoia vs. Trust (cont.)



- Supervisee provides treatment that is videotaped. Videotape and documentation are reviewed by supervisor prior to supervision session.
- Supervisee provides treatment that is audiotaped. Audiotape and documentation are reviewed by supervisor prior to supervision session.
- Supervisee provides treatment, documents it, and supervisor reviews the documentation prior to the supervision session. (Still may have one case video/audio taped for more intensive supervision)

Accurate Representation to the Public



- Never imply practicing Independently.
- See relevant ethics code standards.
- See relevant laws
- E.g., in Maryland “Psychology Associate”. In written communications may only represent oneself as a Psychology practicing under the supervision of (name of psychologist), Maryland licensed psychologist number (license number).

Confidentiality



- Ensuring a clear understanding of the limits of confidentiality and including this in the informed consent agreement/contract:
- Between supervisee and client (mandatory exceptions to confidentiality relevant to all clients as well as how supervision impacts confidentiality such as review of documentation and audio/video tapes, observation of sessions, etc.)
- Between supervisor and supervisee (feedback to training program or others, etc.)

Documentation and Record Keeping



- See APA Ethics Code (<http://www.apa.org/ethics/>)
- See APA Record Keeping Guidelines
(<http://www.apapracticecentral.org/ce/guidelines/index.aspx>)
- Documentation of professional services provided by the supervisee to clients
- Documentation of supervision sessions by both supervisor and supervisee
- Accountability, record of what transpired, agreements and obligations, follow-up, evaluations of supervisee, etc.

Documentation of Supervision (cont.)



- All issues discussed
- Recommendations made
- Actions taken
- Areas in need of remediation, recommendations made, actions taken, assessment, and follow-up
- Assignments given
- Results achieved (Barnett, 2000)

Boundary Issues and Multiple Relationships



- Supervisor as Role Model
 - Standards in the APA Ethics Code
 - Strict adherence to Boundaries
 - Boundary Crossing
 - Boundary Violations
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- Multiple Roles vs. Multiple Relationships
 - Compartmentalizing Roles and Responsibilities

Diversity Issues in Supervision



- Multicultural Competence by supervisor and supervisee
- Integrating attention to diversity issues into all treatment and supervision sessions – intentionally making this a focus of supervision, in the supervisory relationship, in the treatment relationship, and in the client's treatment (e.g., diagnosis, conceptualizing the client's difficulties, etc.)
- Seeing multicultural competence as essential to being competent
- Taking a broad view of diversity (See APA Ethics Code Principle E)

Principle E: Respect for People's Rights and Dignity



- Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

Evaluation and Feedback



- Program Requirements
- Informal Verbal Feedback on an Ongoing Basis
- Periodic Written Feedback as Specified in the Informed Consent Agreement
- Disclosing evaluation criteria and rating form from the outset
- Specifying with whom the evaluation results are shared
- Supervisor as Gate Keeper to the Profession

SUPERVISEE' S FEEDBACK FORM



- What did you find most helpful about this supervision session?
- What did you find least helpful about this supervision session?
- What frustrated you during this supervision session?
- What are you feeling anxious about regarding your future helping skills and supervision sessions?
- What can your supervisor do to assist you with the issues raised in #4 above?
- What do you want your supervisor to know that will be important for helping you to develop and grow as a psychotherapist?
- What are your goals for the next supervision session? What do you hope will occur?

SUPERVISOR'S FEEDBACK FORM



- How did you feel most helpful during this supervision session?
- Where did you feel least helpful about this supervision session?
- What frustrated you during this supervision session?
- What are you feeling anxious about regarding your future supervision skills and supervision sessions?
- What can your supervisor/course instructor do to assist you with the issues raised in #4 above?
- What do you want your supervisor/course instructor to know that will be important for helping you to develop and grow as a supervisor?
- What are your goals for the next supervision session? What do you hope will occur?

Creating Ethical Professionals



- Supervisor as Role Model
- Supervisor as Mentor
 - Going beyond clinical supervision
 - Introducing the supervisee to the profession
- A Focus on Self-Care and Psychological Wellness
 - Distress, burnout, impaired professional competence, vicarious traumatization, self-care, and psychological wellness
- Professional Life/Personal Life Balance

Liability Issues



- **Direct Liability:** the supervisor caused the unethical behavior indirectly through the supervisee and is held accountable
- **Vicarious Liability:** the supervisee caused the unethical behavior but the supervisor is held accountable
- ***Respondeant Superior:*** legal doctrine stating that employers are to be held accountable for the actions of their employees

Direct and Vicarious Liability



- Charges of direct liability can be based on the supervisor's erroneous actions or omissions – for example, having the trainee carry out inappropriate treatment or asking the trainee to complete a task that the supervisor knows (or should know) the student is not trained for; negligent supervision.
- Vicarious liability holds the supervisor responsible for the trainee's actions IF
 - The trainee has voluntarily agreed to work under the direction and control of the supervisor
 - The trainee has acted within the defined scope of tasks permitted by the supervisor
 - The supervisor must have the power and control to direct the trainee's work
- Potentially not liable when: Competent supervision that is appropriately documented, appropriate delegation of tasks, appropriate training and oversight, and the supervisee engages in inappropriate actions.

Top ten factors contributing to “Best” supervisor ratings



- (In descending order):
 - Clinical knowledge and expertise
 - Flexibility and openness to new ideas and approaches to cases
 - Warm and supportive
 - Provides useful feedback and constructive criticism
 - Dedicated to students’ training
 - Possesses good clinical insight
 - Empathic
 - Looks at countertransference
 - Adheres to ethical practices
 - Challenging (Martino, 2001)

Top ten factors contributing to “Worst” supervisor ratings



- (In descending order):
 - Lack of interest in student’s training and professional development
 - Unavailable
 - Inflexible to new ideas and approaches to cases
 - Limited clinical knowledge and experience
 - Unreliable
 - Unhelpful, inconsistent feedback
 - Punitive/critical
 - Not empathic
 - Lack of structure
 - Lack of ethics (Martino, 2001)

Supervisee ratings of the most effective supervisors



- Have good technical skills (good clinical skills and a broad knowledge base; helpful feedback)
- Have good interpersonal skills (supportive of the trainee, warm, accepting)
- Create a perception of investment in the supervisory process
- Model ethical practice and respect for diversity (Lowery, 2001)

Supervisee ratings of the most ineffective supervisors



- Lacking in technical skills (poor clinical skills and unhelpful feedback)
- Poor interpersonal skills (poor communication skills, unreliable, or unavailable)
- Gave the perception that they lacked investment in the supervision (disorganized, not prepared for supervisory sessions, attention focused elsewhere)
- Unethical, demonstrates poor boundaries, making pejorative statements about clients. (Lowery, 2001)

Additional Qualities of Effective Supervisors



- The presence of caring, trusting, and collaborative relationships (Ladany, Ellis, & Friedlander, 1999; Wulf & Nelson, 2000);
- Respect toward and support of supervisees (Watkins, 1995);
- Constructive feedback given in a nonjudgmental and unthreatening manner (Martino, 2001);
- Approachability and receptivity to supervisees' ideas and opinions (Henderson et al., 1999);
- Supervisors “create a safe environment in which supervisees can openly discuss their work, address insecurities and concerns they experience, and have the freedom to experiment or try new strategies and techniques” (Barnett et al., 2007, p. 269).

Critical Incidents in Supervision Reported by Supervisees



- General incompetence of the supervisor, personal problems, shaming, multiple relationships/boundary issues, inappropriate role modeling, and problems with a non-supervisor staff member.
- Disagreement with the supervisor about administrative issues (e.g., paid time off), disagreement with the supervisor about clinical issues (e.g., choice of tests), and never experiencing any problematic incidents in supervision. (Barnett, Erickson Cornish, Kitchener, & Goodyear, 2006)

Critical Incidents in Supervision Reported by Supervisors



- General incompetence of the supervisee,
- Personal problems,
- Dual relationships/boundary problems,
- Confidentiality,
- Failure to consult with the supervisor,
- Failure to follow the supervisor's instructions or agency policy,
- Falsified documentation,
- Lack of informed consent/failure to consult with the supervisor (Barnett, Erickson Cornish, Kitchener, & Goodyear, 2006)

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