

Ethical and Legal Aspects of Clinical Supervision

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We review guidelines for providing supervision for trainees and employees, an expected part of the job for many psychologists, many of whom carry out their supervisory duties with only a cursory awareness of the ethical and legal pitfalls that may accrue. The guidelines are drawn from ethical principles, other documents promulgated by various sectors of professional psychology, and relevant legal cases. Specific suggestions are given for supervisors and training institutions to ensure appropriate supervision. The incorporation of training in supervision in all doctoral programs in professional psychology is recommended.

Clinical supervision has become an area of intense interest in recent years. This interest has been reflected in reviews of ideal supervisor characteristics (Carifio & Hess, 1987), empirical studies of psychotherapy supervision (Lambert & Arnold, 1987), development of models of supervision (e.g., Stoltenberg & Delworth, 1987; Worthington, 1987), and evaluations of supervisees' perceptions of supervisory practices (Allen, Szollos, & Williams, 1986). These and similar articles have focused primarily on the process and content of supervision.

Supervisors also need to be familiar with ethical and legal aspects of supervision that transcend their theoretical orientations and teaching skills (Bent & Cannon, 1987). The ethical issues include supervisor qualifications, duties and responsibilities of supervisors, dual relationships, client consent, and third-party payments. The legal liability of supervisors extends into such areas as direct and vicarious liability, confidentiality and the duty to protect, and standard of care.

In this article we discuss the ethical and legal aspects of the supervision of trainees in psychology, such as what occurs in practica, internships, and postdoctoral work before licensure. We provide a generic coverage of the ethical and legal issues as they apply to all theories or models of supervision. We do not detail how these principles may be played out in unique ways in specific theoretical approaches to training (e.g., supervision in analysis), in supervision for ongoing enhancement of skills by

licensed psychologists, or in supervision provided primarily for administrative or record-keeping purposes by agency directors. Psychologists can find guidance on ethical and legal matters from sources within and outside the profession.

Internal Guidelines

In the *Ethical Principles of Psychologists*, the American Psychological Association (APA; 1981a) made several statements relevant to supervision. Acceptance of membership in the APA commits the psychologist to adhere to these principles. In addition, these principles may take on the force of law when they are incorporated into licensing laws for psychologists.

A second source of guidance includes the APA's General Guidelines (APA, 1987a) and Specialty Guidelines (APA, 1981b), statements by various boards of the APA (e.g., Committee on Scientific and Professional Ethics and Conduct), and other organizations concerned with training and supervision such as the American Association of State Psychology Boards (AASPB; 1979). Because of their aspirational nature, these guidelines lack the enforcement power of the Ethical Principles.

Qualifications of Supervisors

Principle 2 of the Ethical Principles states, in part, "Psychologists recognize the boundaries of their competence and the limitation of their techniques. They only provide services and only use the techniques for which they are qualified by training and experience" (APA, 1981a, p. 634). This principle suggests that psychologists must have received training in how to supervise or must in other ways demonstrate competence as supervisors before they can supervise others. Reading about how to supervise, or relying on past experience as a supervisee, may not be sufficient according to this criterion to prepare a psychologist to be a supervisor. In contrast, the model of hierarchical supervision described by Styczynski (1980) that incorporates reading and didactic instruction with training in how to supervise appears to meet the spirit of this principle.

The APA's (1987a) General Guidelines and the AASPB (1979) guidelines provide more specific statements of qualifications.

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THE VIEWS EXPRESSED herein do not necessarily represent those of the Pennsylvania Psychological Association.

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General Guideline 1.6 states, "Professional psychologists [doctoral, licensed psychologists] limit their practice, including supervision, to their demonstrated areas of professional competence (APA, 1987a, p. 715). The AASPB is even more specific: Supervising psychologists "shall not supervise or permit their supervisee to engage in any psychological practice which they cannot perform competently themselves" (Guideline A, Qualifications; p. 1).

Duties and Responsibilities of the Supervisor

Ethical Principle 7c states that "Psychologists who employ or supervise other professionals in training accept the obligation to facilitate the further professional development of these individuals. They provide appropriate working conditions, timely evaluations, constructive consultations, and experience opportunities" (APA, 1981a, p. 636).

When supervising trainees, supervisors are encouraged to have sufficient knowledge of each client to be able to develop and monitor effective treatment plans and countersign written reports (AASPB, 1979). The guidelines also recommend that the supervisor be available for emergency consultation and direct intervention with clients.

Psychologists are cautioned not to supervise more trainees than they can responsibly manage at one time, remembering that the ultimate responsibility for all clients rests with the supervisor (AASPB, 1979, Guideline C.4). The AASPB Guidelines state that "no more than three full-time persons may be registered for any one supervisor" (p. 3). Some states have incorporated a similar ceiling into their licensure act or regulations.

The lack of timely feedback is reported to be the root of many ethical complaints brought against supervisors (Keith-Spiegel & Koocher, 1985). Supervisors could avoid or reduce the number of such complaints by clarifying in writing the goals of training and supervision and by completing written evaluations of trainees on a regular basis. Ratings of poor performance should never come as a complete surprise to a supervisee. If a trainee practices at an unsatisfactory level and is not given a remediation plan but is later given a poor performance rating that affects future employment, he or she could have grounds for an ethics complaint for failure to provide constructive consultations and timely feedback (Ethical Principle 7c).

Just as practitioners maintain case records on their clients to document their services, it would be prudent for supervisors to also document their supervisory work. Bridge and Bascue (1988) developed a one-page supervisory record form that includes most of the information needed for documentation: the date and session number of supervision; identification of the cases discussed, along with clients' progress and problems; suggestions for further treatment; and remediation plans for the supervisee. The supervisor can prepare this record with three things in mind: the quality of care given the client, the quality of training given the supervisee, and the ethical and legal issues involved if there should be a complaint from the supervisee or the client. Courts have often followed the principle "What has not been written has not been done."

Problems of Dual Relationships

Supervisors by definition hold an advantage of power over supervisees. They occupy a position of trust and are expected to act in the interest of the supervisee's welfare.

Ethical Principle 6a states that "psychologists make every effort to avoid dual relationships that could impair their professional judgment or increase the risk of exploitation. Examples of dual relationships include . . . students, [and] supervisees" (APA, 1981a, p. 636). The APA Ethics Committee has clarified this principle with regard to supervision, stating,

Principle 6a clearly prohibits dual relationships that could impair professional judgment or increase the risk of exploitation. Romantic or sexually intimate relationships between clinical supervisors and supervisees constitute, by fact and by definition, dual relationships. Psychologists should make every effort to avoid such sexual relationships. (Ethics update, 1988, p. 36)

Even if the supervisee willingly initiates the relationship, this statement clearly indicates that the supervisor who pursues the relationship has committed a violation. Hall (1988) noted that Principle 6a also would apply to a licensed psychologist who provides supervision to an unlicensed spouse.

Although these principles appear straightforward, a surprising percentage of supervisors may fail to meet them. In a survey of female members of APA Division 12 (Clinical Psychology), 17% of all respondents reported that while they were graduate students, they had developed sexual relationships with psychology educators (Glaser & Thorpe, 1986). The rate was 21% for those who had received their doctoral degree within the last 6 years. The primary role of 27% of the educators was that of clinical supervisor.

One possible explanation for these findings is supervisees' lack of formal education regarding ethical standards for supervision. Only 3% of the respondents in Glaser and Thorpe's (1986) survey reported that their studies thoroughly covered ethical considerations concerning sexual involvement with educators, and only 9% reported receiving some coverage of the issue. The remaining 88% reported that no coverage at all had been given to educator-student sexual intimacies. These findings support Handelsman's (1986) contention that ethics training by osmosis is not effective.

Other forms of dual relationships between supervisee and supervisor may arise. Although it is difficult to establish absolute guidelines to cover all possible conflict-of-interest situations, the general rule is that when psychologists enter the fiduciary role of supervisor, they must hold that role paramount. Problems are likely to arise, then, when psychologists attempt to supervise trainees who are relatives, spouses, friends, prior clients, or others with whom they would find a potential conflict of interest or with whom they cannot be candid about performance. For the same reason, the supervisor should not be hired by the supervisee but, rather, should be under contract with the supervisee's agency.

Even the most cautious supervisor cannot avoid all dual relationships, however. It is inevitable that supervisors will encounter trainees in social settings, in community activities, and in other professional settings. Supervisors do not need to shun the trainee on these occasions, unless the supervisor believes

that the supervisee-supervisor relationship will be compromised.

Informed Consent and the Use of Supervision

The AASPB Guidelines suggest that clients have a right to know when they are receiving services from a psychologist-in-training. The client's informed consent is especially important when the trainee is in early stages of training because the client has the right to elect not to receive the service under these conditions (Dworkin, 1982). Failure to inform a client of a trainee's status may expose the student and the supervisor to possible lawsuits alleging fraud, deceit, misrepresentation, invasion of privacy, breach of confidentiality, and lack of informed consent (Annas, 1980).

Marketplace Issues for Supervisors

A trainee may not advertise or market services, collect fees, or make public announcements as an independent provider of services. Only a credentialed psychologist may take these steps. Payments for services provided by a trainee must be made to the supervisor or agency and never to the trainee. Titles of trainees should indicate their supervised status, and business cards and letterhead must not mislead the public into believing that the uncredentialed supervisee delivers services independently. Titles such as "Psychological Intern" or "Psychological Assistant" have been suggested (APA, 1987b).

One of the most distressing marketplace issues is the matter of the supervisor's signing insurance forms for reimbursement for a trainee when the form requires the signature of the professional who actually provided the service. Although it may be unfair for insurance companies to refuse reimbursement for services not personally provided by the credentialed psychologist, it is nonetheless fraudulent for supervisors to sign the form as if they had provided the service (Kovacs, 1987). At the very least, the supervisor should cosign the form as "Supervisor." Challenging this restrictive practice of insurance companies should be done through the courts or the legislature, not by fraudulently signing the form.

External Regulations

The legal liability of supervisors and employers arises primarily out of the common law, or the law established by the courts. Even when clients consent to treatment by a trainee, the client does not thereby consent to receive substandard care or to be injured. When an injury does occur, the trainee, the supervisor, the agency, and perhaps the student's sponsoring educational institution will all be likely defendants. The supervisor's legal liability to the client may be either direct or vicarious.

Direct Liability

Charges of direct liability may be based on the supervisor's erroneous actions or omissions even though the injury to the client occurred at the hands of the trainee (Kapp, 1984). For example, direct liability could be imposed if the supervisor had been derelict in the supervision of the supervisee. As described earlier, the AASPB (1979) guidelines state that the supervisor is

responsible for the planning, course, and outcome of the supervisee's work. Although the AASPB guidelines are not legally binding, a court may use them as standards by which to determine what constitutes appropriate supervision.

Direct liability could also occur if the supervisor gave the trainee inappropriate advice about treatment and the trainee carried it out to the client's detriment (Dooley, 1977). Direct liability could also accrue if the supervisor failed to listen carefully to the trainee's comments about the client and therefore failed to comprehend the client's needs, or because the supervisor generally failed in carrying out his or her supervisory duties. Direct liability on the basis of negligent supervision was raised in *Cosgrove v. Lawrence* (1987) when a social worker had sexual intercourse with the plaintiff numerous times, both at the mental health facility and at other locations.

Direct liability could also occur if the supervisor assigned a task to a trainee whom the supervisor knew or should have known to be inadequately trained to execute it. The supervisor is expected to know the level of skill of supervisees.

Vicarious Liability

The doctrine that has established the vicarious liability of supervisors is *respondere superior* ("Let the master respond"). Because supervisors are in a position of authority and responsibility, and because they stand to profit from the actions of their supervisees, courts have held that supervisors may be responsible for the actions of their employees and supervisees (Slovenko, 1980). The reasoning behind this theory is that employers or supervisors have the power to select those who will work under them, and because supervisors profit from these persons' actions, the supervisors are better able to bear the financial burdens of insurance or court-ordered financial damages.

Three criteria must be met before the supervisor is liable for the actions of another (Kapp, 1984). First, the subordinate must voluntarily agree to work under the direction and control of the supervisor and act in ways that benefit the supervisor. The supervisees do not need to be paid for their actions for liability to accrue, and it is likewise irrelevant whether supervisors are paid for their services (*Baxter v. Morningstar*, 1974). Also, the supervisee must have acted within the defined scope of tasks permitted by the supervisor. Last, the supervisor must have the power to control and direct the supervisee's work.

The legal and ethical responsibility is the same whether the supervisor is a consultant or an employee of the training agency. The issue is primarily a question of who has administrative control over the client. From an ethical and training standpoint, trainees should not assume final responsibility for clients. The supervisor, or another credentialed professional in the agency, must carry the decision-making responsibility. The supervisor, whether as an employee or as a consultant, must also make the necessary arrangements for assuming the responsibility with the agency, and he or she may be held liable whenever decision-making authority is assumed (Slovenko, 1980).

Standard of Care

In general, a trainee or employee is held to the same standard of care as a licensed professional (Kapp, 1984; Slovenko, 1980).

For example, in *Emory University v. Porubiansky* (1981), the Georgia Supreme Court concluded that the status of a university as a training institution did not lower the standard of reasonable care and skill in treating dental patients.

If at any time the supervisors believe that a client is not receiving adequate care, they must act to protect the client. The protection holds true not only for the decisions in the course of treatment but for termination or referral as well (Cormier & Bernard, 1982).

The supervisor should thoroughly investigate any suggestions of harm to the patient. In *Andrews v. United States* (1982), a physician's assistant and the physician who supervised him were found liable. The physician's assistant developed a sexual relationship with a patient, and one of the staff physicians did not adequately investigate the complaint when he heard about it indirectly from another patient. The supervising physicians would probably not have been liable if they had made a reasonable response to the allegation, such as speaking with the patient or filing a written report.

Confidentiality and the Duty to Protect

The need to violate confidentiality in order to warn or protect others from harm is especially troublesome for supervisors. Because supervisees are normally expected to provide the same standard of care as a licensed professional, supervisees have the same duty to warn and to protect others from harm (Knapp & VandeCreek, 1987). The most widely known case pertinent to this issue is *Tarasoff v. Regents of the University of California* (1976). The California court ruled that the psychologist should have done more to prevent the murder committed by his client, and the court established the duty to protect when a client presents a danger to others. The psychologist's supervisor, a psychiatrist, was held responsible as well, along with the institution. The plaintiff's attorney acknowledged that if the supervisor had examined the patient and decided that he was not dangerous, there would have been no grounds for action (Slovenko, 1980). "However, the supervisor never saw the patient and ignored the medical records developed by his staff" (Slovenko, 1980, p. 468).

A related case underscores the need for written policies to guide supervisees and the agency in the management of dangerous patients. *Peck v. The Counseling Service of Addison County* (1985) extended the duty to protect against threats to property. After an argument with his father, Peck told his counselor that he was considering burning down his father's barn. After a discussion with Peck, the counselor was satisfied that the threat was not a serious one, and she did not discuss the matter with her supervisor or issue any warnings. She did send for Peck's medical records but did not contact any of the physicians who had previously treated Peck. The next day, Peck burned down the barn. The court found that the counselor was negligent in failing to warn, on the basis of her failure to obtain the past medical records more quickly, her failure to take an adequate history, and her failure to consult her supervisors. The Counseling Service was negligent in that it did not have any written policy regarding consultation procedures when a client presents a serious danger. The lack of policy may be seen as a supervisor's failure to exercise the right of control. Had the center had such

a policy, there might have been no grounds for action against it if the counselor had been acting outside the scope of the agency's policy.

Discussion and Recommendations

Some aspects of the preceding discussion may make licensed psychologists reluctant to provide supervision, but this need not be so for the responsible professional. If supervisors are aware of the issues that we have discussed and they act with the expected circumspection and responsibility, their welfare, as well as that of the supervisee and the client, should be protected.

We encourage training facilities, licensure and credentialing boards, and the APA to reconsider the assumption that knowledge about ethical and legal guidelines for supervision can be obtained informally.

The internal and external guidelines for supervision are convergent, rather than divergent, in nature. Both are intended to protect the welfare of the public. Neither contradicts the other. Both challenge the supervisor to act in accordance with the highest standards possible to protect the interests of both the client and the supervisee.

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Received November 17, 1988

Revision received April 13, 1989

Accepted August 1, 1989 ■

Publication Practices and Scientific Conduct

The recent disclosures of fraud in the conduct of research, reporting of research, or both in a number of scientific disciplines have prompted a widespread program of self-examination of publication practices and ethics.

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