

A black and white photograph of a pair of scales of justice, symbolizing law and ethics. The scales are centered in the background of the slide.

Legal and Ethical Issues In Supervision

John Michael Dandurand, PhD

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Objectives

Objectives

1. Identify six ethical issues which can emerge in the context of supervision.
2. Identify seven legal concepts which are relevant to work as a clinical supervisor.
3. Articulate components of supervisory malpractice.
4. Identify nine types of unethical behavior that supervisors may observe in themselves and their supervisees.

APA CEU DISCLAIMER: There are no known personal, professional, legal, financial, or other interests could reasonably be expected to impair this presenter's objectivity, competence, or effectiveness as it pertains to this presentation.

However, this presenter elects to disclose that he provides pre-licensure supervision for interns in the NPTC in Missouri in the capacity of a Missouri licensed psychologist. In addition, this presenter is not a lawyer and legal counsel should be consulted as appropriate.

This presentation does not contain an exhaustive list of ethical and legal obligations of a clinical supervisor.

Small Group
Activity in
Breakout
Rooms
(~10 Minutes)

Task:
Identify a legal or ethical
concern that you have
about being a clinical
supervisor.

Ethical Issues
General
Principles

**APA (2016) General (Ethical) Principles
Apply To Supervision Too...**

Principle A: Beneficence and Nonmaleficence

Principle B: Fidelity and Responsibility

Principle C: Integrity

Principle D: Justice

Principle E: Respect for People's Rights and Dignity

Ethical Issues In Supervision

Löfström and Pyhältö (2020) summarize:

“Prior studies in U.S. and Australian contexts have identified various forms of ethical problems in supervision, including issues around **incompetent and inadequate supervision, supervisor abandonment, intrusion of supervisor views, abusive and exploitative supervision, bullying, confounded or dual relationships, encouragement to commit fraud, and authorship issues** (Goodyear et al., 1992; Mahmud & Bretag, 2013)” (p. 536.)

(Emphasis Added)

Ethical Issues In Supervision

Bernard and Goodyear (2014) Highlight The Following Ethical Issues Which Occur In The Context of Supervision:

1. Due Process
2. Informed Consent
3. Multiple Relationships
4. Supervisor and Supervisee Competence
5. Confidentiality
6. Business-Related Supervisory Issues

Ethical Issues
In Supervision

Due Process

Due Process

Ensures That:

- (a) "Notice and hearing is given before an important right can be removed from a person" and
- (b) "The criteria being used are fair"

Violations Include:

"When a supervisee is given a negative final evaluation or dismissed from a training program or job without having had either prior warning that his or her performance was inadequate or a reasonable amount of time to improve (a procedural due process issue)".

(Bernard and Goodyear, 2014, p. 255)

Ethical Issues
In Supervision

Due Process

Due Process

"A full due process procedure should ensure that the supervisee in question is guaranteed an objective and respectful review of the situation, as well as the expert opinions of both professionals and the person who initiated the concern."

(Bernard and Goodyear, 2014, p. 255)

Ethical Issues
In Supervision

*Informed
Consent*

Informed Consent

Bernard and Goodyear (2014) note that there are “three levels of responsibility with respect to informed consent”:

- (1) “Provide the supervisee with the opportunity for informed consent” [about processes and expectations of supervision],
- (2) “Determine that the supervisee informs client about the parameters of therapy”,
- (3) “Determine that the supervisee informs client about the parameters of supervision that will affect them” (p. 256).

Ethical Issues
In Supervision

*Informed
Consent*

Informed Consent For Supervision

“At a minimum, this agreement should include the following topics: expectations, responsibilities, and obligations of both supervisor and supervisee; any fees and financial arrangements relevant to the supervisory relationship; scheduling and emergency contact information; documentation and record keeping requirements; the use of any audio and video recording; evaluation and feedback to include the expectations and requirements for successful completion of the training experience; expectations for confidentiality and any reasonably anticipated limits to confidentiality; legal requirements such as mandatory reporting requirements; expectations for use of the supervisor and when the supervisee should contact him or her; and information about how and when the supervisory relationship will be ended” (Barnette and Molzon, 2014, pp. 1052-1053).

Ethical Issues
In Supervision

*Multiple
Relationships*

Multiple Relationships

Bernard and Goodyear (2014) highlight that multiple relationships are unethical when:

“(a) there is a power differential between the two parties and (b) the multiple roles they have in relationship to each other puts the person with the less power [...] at risk for exploitation or harm” (p. 259).

Ethical Issues
In Supervision

*Multiple
Relationships*

Multiple Relationships

Bernard and Goodyear (2014) identify the following types of multiple relationships that need to be monitored for in supervisory relationships:

- Multiple Relationships Between Supervisees and Clients
- Multiple Relationships between Supervisor and Supervisee
 - Sexual Attraction
 - Sexual Harassment
 - Intimate Committed Relationships
 - Nonsexual Multiple Relationships

(Bernard and Goodyear, 2014, pp. 259-265)

Ethical Issues
In Supervision

Confidentiality

Confidentiality

-Supervisee is likely to disclose personal information and is being evaluated by supervisor.

-Absent some compelling reason otherwise, this information [referring to personal disclosures] should be considered confidential."

(Bernard and Goodyear, 2014, pp. 270)

Ethical Issues
In Supervision

Confidentiality

Confidentiality

-"Supervisor must ensure that supervisee keeps all client information confidential except for the purposes of supervision"

-In group supervision "supervisor must reiterate this [...] and take extra precaution of having cases presenting using first names only, and with as few demographic details as possible."

(Bernard and Goodyear, 2014, pp. 270)

Ethical Issues
In Supervision

*Supervisor
and Supervisee
Competence*

Supervisor and Supervisee Competence

- In Area Being Supervised
- In Supervision Process Itself
- Supervisor Has Obligation to Remain Competent
- Monitoring Supervisee Competence (Including Evaluator and Gatekeeper Function)

(Bernard and Goodyear, 2014, pp. 266-269)

Ethical Issues
In Supervision

*Supervisor
and Supervisee
Competence*

Supervisor and Supervisee Competence

- “Knowledge/skill acquisition and evaluation are usually based on a single didactic course; typically, minimal practicum experience and direct ‘supervision of supervision’ are provided. Supervision is barely covered on the national licensing exam. Furthermore, most jurisdictions do not require postlicensure continuing education in supervision. Once psychologists are licensed, they can supervise automatically and immediately. The current situation is problematic because emerging evidence suggests suboptimal supervision may be prevalent.”

(Mann and Merced, 2018, p. 98)

Ethical Issues
In Supervision

*Business-
Related
Supervisory
Issues*

Business-Related Supervisory Issues

- Signing off (To Secure Billing Without Oversight) vs. Actually Supervising
- Payment for Supervision

(Bernard and Goodyear, 2014, pp. 271)

Basic Legal
Concepts

*Standard of
Care*

1. Standard of Care

“What is or is not an acceptable practice in clinical treatment or supervision”.

(Martin and Turner, 2020, p. 103)

Basic Legal
Concepts

*Duty To
Supervise
and Client*

2. Duty to Supervise and Client

"If there is no duty, there is no problem – no vulnerability".

"[...] How may a duty to a supervisee be confirmed? The list of possible confirmation includes numerous items, such as a cancelled check for payment for supervision, names and times in appointment books, telephone records, notes from meetings, and so on."

"[Duty] [...] also establishes accountability for compliance with relevant laws, regulations, professional ethics, and normative standards of care, among other things."

(Martin and Turner, 2020, pp. 103)

Basic Legal
Concepts

*Vicarious
Liability*

3. Vicarious Liability

"Indirect liability for clinical supervisors. [...] A clinical supervisor is accountable for almost every professional action of a supervisee, including those actions of which the supervisor has no direct knowledge".

(Martin and Turner, 2020, p. 104)

Basic Legal
Concepts

*Vicarious
Liability*

Note: Strict Liability Standard and Clinical Supervision

- “Many states that impose a strict liability standard on supervisors for supervisees’ conduct. Applied in the context of tort law, the concept of strict liability **makes supervisors responsible for supervisees’ actions without having to establish that a given supervisor was negligent or careless.** Consequently, in jurisdictions where the strict liability standard is used, it is virtually inevitable that clinical supervisors will be named in civil suits over a supervisee’s actions regardless of whether a supervisor has been appropriately conscientious [...] regulations in 27 of 51 jurisdictions (the 50 states plus the District of Columbia) generally hold clinical supervisors fully responsible for supervisees’ actions in a professional realm regardless of the nature of the supervisees’ misbehavior.”

(Polychronis and Brown, 2016, p. 139)

Basic Legal
Concepts

*Direct
Liability*

4. Direct Liability

“Legal accountability of the supervisory actions of a clinical supervisor. It encompasses fraudulent, misleading, erroneous, improper, unethical, and illegal actions and omissions of a clinical supervisor”.

(Martin and Turner, 2020, p. 104)

Basic Legal Concepts

Statutory Liability

5. Statutory Liability

“Clinical supervisor’s obligation to comply with laws and regulations”.

(Martin and Turner, 2020, p. 104)

Basic Legal Concepts



6. Competence

“The standards of competence for clinical supervisors continues to develop.” However, these generally include an “expectation of practicing competence [...]”.

Recommended Reading:
“APA Guidelines for Clinical Supervisor In Health Service Psychology”
<https://www.apa.org/about/policy/guidelines-supervision.pdf>

(Martin and Turner, 2020, p. 104)

Basic Legal
Concepts

7. Evaluation of Supervisees

“Is the supervisee functioning withing normative professional standards and improving her or his skills and abilities to deliver effective clinical services?”

(Martin and Turner, 2020, p. 105)

Basic Legal
Concepts

*Evaluation
of Supervisees*

7. Evaluation of Supervisees (Continued)

“Supervisors serve as gatekeepers to the profession. Gatekeeping entails assessing supervisees’ suitability to enter and remain in the field.

Supervisors help supervisees advance to successive stages of training upon attainment of expected competencies (Bodner, 2012; Fouad et al., 2009). Alternatively, if competencies are not being attained, in collaboration with the supervisee’s academic program, supervisors devise action plans with supervisees, with the understanding that if the stated competencies are not achieved, supervisees who are determined to lack sufficient foundational or functional competencies for entry to the profession may be terminated to protect potential recipients of the supervisee’s practice (Forrest et al., 2013). Descriptions of such processes are in the training program’s or organization’s explicit plans for addressing competency problems or the unsuitability of the supervisee for the profession.”

(APA, 2014, p. 20)

Malpractice

Malpractice

“Malpractice claims against supervisors and clinicals succeed because the supervisee or client suffered damages and the damages meet the standards for a successful claim in legal proceedings.”

(Martin and Turner, 2020, p. 106)

Malpractice

Examples

Malpractice Examples

- Inappropriate Client Care (e.g., Supervisee lacked competence, was incapable of delivery)
- Lapses in Normative Supervisory Accountability (e.g., Did not meet normally for supervision)
- Direct Harm (e.g., Sexual relations with supervisee)
- Violation of Laws or Regulations (e.g., failed to make a report that was required)

(Martin and Turner, 2020, p. 106)

Malpractice
Components

Malpractice Components

1. Normative and demonstrably duty to supervisee (e.g., supervision contract).
"Where there is no duty there is no claim".
2. Breach of duty (e.g., poor advice, came intoxicated to supervision)
3. Supervisee or client "suffered damages as a result of the actions of the supervisor or the supervisor failed to take appropriate actions."
4. "Must establish that there was causation between a breach of duty and damages that the supervisee suffered" [or the client].

(Martin and Turner, 2020, p. 106)

"Unethical"
Behavior
Categories

**Competency
Issues**

Koocher and Keith-Spiegel (2008) ask
"Who Are the Unethical
Mental Health Professionals?"

"The Uninformed or Misinformed"

"A substantial number of violators appear to be either naive or uneducated about what conduct is expected of them." (p. 9).

"The Insufficiently Prepared"

"Many therapists who come to the attention of ethics committees, licensing boards, or the courts have vastly miscalculated the level of their overall skills or their ability to apply specific technique" (p. 10).

"The Burned-Out and Vulnerable"

"Therapists suffering from their own emotional or physical challenges, burnout, family crises, and other stressors also reveal themselves in a substantial number of cases involving misconduct" (p. 10).

**“Unethical”
Behavior
Categories**

**Lack of or
Lapses in
Maintaining
Self-Awareness**

**Koocher and Keith-Spiegel (2008) ask
“Who Are the Unethical
Mental Health Professionals?”**

“Therapists Who Rationalize ”

“Defenses used by mental health professionals to justify behaviors that objective observers would judge as highly questionable ” (p. 11).

“Therapists With Too-Loose Boundaries”

“Blending the professional role with another form of interaction or connection resulting in harm (p. 13).”

“The Oblivious Exploiters”

“Mental health professionals knowingly take advantage of clients, students, or research participants by abusing their positions of trust or authority” (p. 13).

**“Unethical”
Behavior
Categories**

Insensitivity

**Koocher and Keith-Spiegel (2008) ask
“Who Are the Unethical
Mental Health Professionals?”**

“Offensive Dispositions”

“[...] Callous statements violate the dignity and respect due to clients” (p. 14).

“The Irresponsible”

“[...] Unreliable execution of professional duties, shoddy or superficial professional work when one knows better, and attempts to blame others or cover up mistakes or inadequacies” (p. 14).

"Unethical"
Behavior
Categories

**Momentary
Slips**

Koocher and Keith-Spiegel (2008) ask
"Who Are the Unethical
Mental Health Professionals?"

"Momentary Slips"

"Conditions can converge to displace one's usual attentiveness with transitory blindness, sometimes due to an inconvenient situation or distraction. Or, as the result of immediate situational demands, therapists commit acts with unintended consequences " (p. 15).

"Unethical"
Behavior
Categories

Koocher and Keith-Spiegel (2008) ask
"Who Are the Unethical
Mental Health Professionals?"

Martin and Turner (2020) note in reference to these categories, "clinical supervisors need to be aware of all of these types of individuals and to be alert to the potential of unethical actions by their supervisee and possibly in themselves. Generally, the less accurate self-awareness is among supervisees, the more likely they are to engage in unethical decision making and actions."

Role Play Activity

Supervisor:
Practice supervision of supervision (SOS) during today's role play. Label legal and ethical issues.

Supervisee:
Create a hypothetical supervisee with ethically or legally problematic behavior to bring into SOS.

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