CHAPTER 7 ETHICAL ISSUES AND MULTIPLE RELATIONSHIPS IN SUPERVISION

Ethical Issues in Clinical Supervision

Some critical ethical issues in supervision are balancing the rights of client’s the rights and responsibilities of supervisees
THE SUPERVISOR’S RESPONSIBILITIES

- Supervisors have a responsibility to provide training and supervised experiences that will enable supervisees to deliver ethical and effective services.

- It is essential for supervisors to be knowledgeable and skilled in the practice of clinical supervision.

- From an ethical perspective, it is essential that supervisors monitor their own behavior so as not to misuse the inherent power in the supervisor-supervisee relationship.
The Supervisor’s Responsibilities (cont’d)

- Supervisors are responsible for ensuring compliance with relevant legal, ethical, and professional standards for clinical practice.

- The main purpose of ethical standards for clinical supervision are to provide behavioral guidelines to supervisors, protect supervisees from undue harm or neglect, and ensure quality client care.
THE SUPERVISOR’S RESPONSIBILITIES (CONT’D)

- Guidelines to supervisors for the effective practice of supervision:
  - Offer supervision only after obtaining the education and training to ensure competence in this role
  - Assess each supervisee’s competencies and training needs at the beginning of supervisory relationship; determine the degree of supervision and level of oversight needed
  - Treat supervisees with respect and as colleagues-in-training
  - Promote ethical practice of supervisees by drawing attention to ethical issues throughout the duration of the supervisory relationship
MODELING CONFIDENTIALITY

- Deal appropriately with confidentiality issues pertaining to supervisees.

- Supervisors have an evaluative role, and at times faculty members need to be apprised of students’ progress.

- Personal information that supervisees share during a supervision session should generally remain confidential.

- Supervisees should have a right to be informed about what will be revealed and what will not be shared with others on the faculty.
Modeling Confidentiality (Cont’d)

- Supervisors need to put ethics in the foreground of their supervisory practices, which can be done by treating supervisees in a respectful, professional, and ethical manner.

- Supervisors must make sure that both supervisees and their clients are fully informed about the limits of confidentiality, including those situations in which supervisors have a duty to warn or protect, or to report.
Teaching Supervisees How to Make Ethical Decisions

- A chief responsibility to supervisors is to teach their supervisees how to think about the ethical dilemmas they are bound to encounter and to help them develop a framework for making ethical decisions
TEACHING SUPERVISEES HOW TO MAKE ETHICAL DECISIONS (CONT’D)

Eight procedural steps as a way to think through ethical dilemmas:

1. Identify the Problem or Dilemma
2. Identify Potential Issues Involved
3. Review Relevant Ethics Codes
4. Know Applicable Laws and Regulations
5. Obtain Consultation
6. Consider Possible and Probable Course of Action
7. Enumerate the Consequences of Various Decisions
8. Decide the Best Course of Action
COMPETENCE OF SUPERVISORS

1. Competent supervisors are trained in supervision and periodically update their knowledge and skills on supervision topics through workshops, continuing education, conferences, and reading.

2. Competent supervisors must have education and experience necessary to be competent in the area of clinical expertise in which they are providing supervision.

3. Must have effective interpersonal skills and be able to work with a variety of groups and individuals in supervision and with therapists with a range of life and clinical experience.

4. Must be cognizant of the fact that supervision is a situational process that is dependent on interaction between the supervisor, the supervisee, the setting and the client.
COMPETENCE OF SUPERVISORS (CONT’D)

- 5. Must be flexible and be able to assume a variety of roles and responsibilities
- 6. Must have a broad knowledge of laws, ethics, and professional regulations
- 7. Must be able to stay focused on the fact that a primary goal of supervision is to monitor clinical services so that the welfare of the client is protected
- 8. Are willing to serve an evaluative function with supervisees and provide feedback about their performance on a regular basis
- 9. Document supervision activities in a timely and accurate fashion
- 10. Empower supervisees
Supervisor impairment is defined as the inability to perform the functions involved in the supervisory role because of interference by something in the supervisor’s behavior or environment, with the caveat that a distinction should be made between incompetence and impairment.
INCOMPETENT OR IMPAIRED SUPERVISEES

- It is likely that in the supervisory role you will encounter some trainees with skill deficits, gaps in knowledge, personality issues, or any number of other problematic behaviors or attitudes that are hindering the development of their competence.
Trainee Impairment

- A range of behaviors can adversely affect the ability of students and trainees to effectively carry out their clinical duties.

- Two severe problems are substance abuse and personality disorders.

- More subtle aspects of trainee impairment include interpersonal sensitivity, need for extreme control, and using one’s position to meet personal needs at the client’s expense.
MONITORING TRAINEE COMPETENCE

- Given the increased awareness of possible damage caused by mental health professionals who do not possess the personal qualities necessary for effective practice, it is clear that therapist educators and supervisors have a responsibility to serve as gatekeepers for the profession.
Taking Action with Incompetent Supervisees

Supervisees have due process rights and dismissal from a raining program should be the last resort after other interventions have failed to produce any change in supervisees who exhibit deficiencies.
**Taking Action with Incompetent Supervisees (Cont’d)**

- General procedural guidelines for due process;
  - Written description that gives reasons for termination
  - Oral and written evaluation of trainees regarding their personal and interpersonal functioning
  - Written action plans for remediation specifying the expected behavioral changes, and timeline, and consequences for failing to remediate
  - A notification process for dismissal
  - Procedures that permit trainees to appeal a decision to dismiss
Multiple Roles and Relationships in the Supervisory Process

- The process of supervision becomes more complicated when supervisors take on two or more roles, either personally or professionally, simultaneously or sequentially
ETHICAL STANDARDS AND MULTIPLE ROLES AND RELATIONSHIPS

- It is the responsibility of the supervisor to handle role related conflicts in an appropriate and ethical manner
MANAGING MULTIPLE ROLES AND RELATIONSHIPS

- Multiple roles and relationships cannot always be avoided, supervisors have the responsibility to manage them in ethical and appropriate ways.

- The difference between boundary crossings and boundary violations is relevant in the supervisory relationship as well as in the client-therapist relationship.

- A boundary crossing is a departure from standard practice that could potentially benefit the client or supervisee, whereas a boundary violation is a serious breach that causes harm to the client or supervisee.
MENTORING

- There are challenges a supervisor faces in balancing the sometimes conflicting roles involved in mentoring and evaluating supervisees.

- The difficulties supervisors may experience in balancing a mentoring roles, or the commitment to their supervisees, with the obligation to evaluate and screen their supervisees’ capacity for competent practice.
SEXUAL ATTRACTION IN SUPERVISION

- Attraction, in and of itself, is not problematic

- It is what individuals do with the attraction that determines the appropriateness or inappropriateness of these reactions

- The supervisor has a responsibility to provide a safe learning environment for supervisees

- It is also a supervisor’s job to train supervisees about sexual attraction in a way that encourages them to become aware of their attractions and work through them in a professional manner

- Supervisees are strongly encouraged to discuss such matters in supervision, but it is largely the responsibility of the supervisor to create a safe climate that will allow supervisees to discuss matters of sexual attraction
SUPERVISOR ATTRACTION TO SUPERVISEE

There is a distinction between finding a supervisee attractive and being preoccupied with this attraction
Helping Supervisees Deal with Sexual Attractions to Clients

- Although transient sexual feelings are normal, intense preoccupation with clients is problematic
SEXUAL INTIMACIES BETWEEN SUPERVISOR AND SUPERVISEE

- Although multiple relationships are common in university settings, sex between students and their professors and supervisors is forbidden by ethical standards.

- As in the case of sexual relations between therapists and clients, sex in the supervisory relationship invariably results in a loss of objectivity and an abuse of power because of the difference in status between supervisees and supervisors.

- There is the matter of poor modeling for supervisees for their relationships with clients.
**Sexual Intimacies Between Supervisee and Client**

- Any form of sexual intimacy between supervisees and their clients is inappropriate and unethical.

- However, sexual attraction may very well occur, and being able to talk about this in supervision is of the utmost importance.

- If sex between the supervisee and the client is occurring, the supervisor has a legal and ethical obligation to do everything possible to intervene immediately.
CHAPTER 8 LEGAL AND RISK MANAGEMENT ISSUES IN SUPERVISION

LEGAL PRINCIPLES THAT AFFECT SUPERVISORY PRACTICE

- Supervisors must have a working knowledge of the basic legal principles that affect supervisory practice.
Here are some basic terms that are fundamental to understanding legal issues in supervision:

- **Standard of care**
  - The normative or expected practice performed in a given situation by a given group of professionals

- **Statutory liability**
  - Specific written standard with penalties imposed, written directly into the law

- **Malpractice**
  - The failure to render professional services or to exercise the degree of skills that is ordinarily expected of other professionals in a similar situation
Legal Principles That Affect Supervisory Practice (Cont’d)

Here are some basic terms that are fundamental to understanding legal issues in supervision:

- **Negligence**
  - Failure to observe (or lack of awareness of) the proper standard of care

- **Negligent liability**
  - Failure to provide an established standard of care

- **Vicarious liability**
  - Responsibility for your own actions of authority and control over others

- **Privileged communication**
  - The privilege allowed an individual to have confidential communications with a professional. It prevents the courts from requiring revelation of confidential communication
Here are some basic terms that are fundamental to understanding legal issues in supervision:

- **Duty to warn**
  - The obligation of the mental health professional to make a good-faith effort to contact the identified victim of a client’s serious threats of harm and/or to notify law enforcement of the threat.

- **Duty to protect**
  - The obligation of a therapist to take action to protect a threatened third party; the therapist usually has other options besides warning that person of the risk of harm, such as hospitalizing the client or intensifying outpatient treatment.

- **Duty to report**
  - The obligation of a therapist to report abuse or suspected abuse of children, older persons, or as it is referred to in some states, vulnerable adults or vulnerable individuals, in a timely manner.
**Standard of Care**

- Six underlying principles must be considered when establishing standard of care for supervisory practice:
  - Autonomy
    - Promote-self-determination or the freedom of clients to choose their own direction; integrity; and respect for one’s rights and dignity
  - Non-maleficence
    - Avoid doing harm, which includes refraining from actions that risk hurting clients, either intentionally or unintentionally
  - Beneficence
    - Promote good for others
STANDARD OF CARE (CONT’D)

- Six underlying principles must be considered when establishing standard of care for supervisory practice:
  - Justice
    - Foster fairness or a means of providing equal treatment to all people
  - Fidelity
    - Make honest promises and honor commitments to those served
  - Veracity
    - Promote truthfulness, which involves the practitioner’s obligation to deal honestly with clients
STANDARD OF CARE (CONT’D)

- To this list self-care can also be added, which involves taking adequate care of ourselves so that we are able to implement the preceding virtues.
STATUTORY LIABILITY

- State laws vary with regard to how supervisors are to monitor the performance of supervisees, whether supervisees may pay their supervisors for supervision or office space, restrictions on advertising by supervisees, and documentation required in the supervisory relationship.
MALPRACTICE AND NEGLIGENCE

- The word malpractice means “bad practice”

- Malpractice is the failure to render professional services or to exercise the degree of skill that is ordinarily expected of other professionals in a similar situation

- Malpractice is a legal concept involving negligence that results in injury or loss to the client

- Professional negligence can result from unjustified departure from usual practice or from failing to exercise proper care in fulfilling one’s responsibilities
MALPRACTICE AND NEGLIGENCE (CONT’D)

Four elements as described in Black’s Law Dictionary:

1. Duty
   - There are two aspects of establishing a legal duty: one is the existence of a special relationship, and the other is the nature of the special relationship
   - A duty exists when a therapist (or supervisor) implicitly or explicitly agrees to provide professional services
MALPRACTICE AND NEGLIGENCE (CONT’D)

2. Breach of duty

- Once the plaintiff proves that a professional relationship did exist, he or she must show that the duty was breached
- Therapists (or supervisors) have specific responsibilities that involve using ordinary and reasonable care and diligence, applying knowledge and skill to a case, and exercising good judgment
- If the therapist (or supervisor) failed to provide the appropriate standard of care, the duty was breached
- In supervision, this breach of duty may involve either actions taken by the supervisee or supervisor or a failure to take certain precautions
MALPRACTICE AND NEGLIGENCE (CONT’D)

3. Injury
   - Plaintiffs must prove that they were harmed in some way—physically, relationally, psychologically—and that actual injuries sustained
   - In supervision, injuries can occur to either the supervisees or the clients they serve
   - An example of such an injury is lack of due process when terminating a supervisee from a training program

4. Causation
   - Plaintiffs must demonstrate that the therapist’s (or supervisor’s) breach of duty was the proximate cause of the injury suffered
   - The test in this case lies in proving that the harm would not have occurred if it were not for the therapist’s (or supervisor’s) actions or omissions
NEGLIGENCE LIABILITY

- There are two main types of negligent liability:
  - Vicarious liability
    - The supervisor is held liable for the actions of the supervisee regardless of any fault on the part of the supervisor
  - Direct liability
    - The supervisor is held directly liable for his or her own negligent supervisory practice
RESPONDENT SUPERIOR

- One who occupies a position of authority or control over another may be held legally liable for damages caused by the subordinate.

- In terms of supervision, this means that supervisors can be held liable for the actions of supervisees.

- This liability pertains to whether or not the supervisor breaches a duty.
**Borrowed Servant Rule**

- This rule is used to determine who had control of the supervisee at the time of the negligent act.

- In determining whether a person is the servant of another, the essential test is whether a person is subject to another’s control or right of control, with regard not only to work to be conducted but also to the manner of performing that work.
ENTERPRISE LIABILITY

- This theory focuses on the foreseeability of the supervisee’s actions in view of the nature of the duties to be performed.

- If the supervisor stands to make a profit from the work conducted by a supervisee, the supervisor should be willing to bear the risk of damages to clients.
DIRECT LIABILITY

Today supervisors are held responsible for negligent supervisory practices, which may include any of the following:

- Allowing a supervisee to practice outside his or her scope of practice
- Not providing consistent time for supervision sessions
- Lack of emergency coverage and procedures
- Not providing a supervisory contract
- Lack of appropriate assessment of the supervisee and the clients he or she serves
- Lack of sufficient monitoring of supervisee’s practice and/or documentation
- Lack of consistent feedback prior to evaluation
- Violation of professional boundaries in the supervisory relationship
- Failure to follow accepted practices of supervision
Privileged Communication

- Courts generally require a statutory or legal basis for finding a communication privileged

- It is also important to remember that many states define exceptions to otherwise privileged communication
DUTIES TO WARN, PROTECT, AND REPORT

- Supervisors are responsible for training supervisees in appropriate assessment of violence potential, suicide, and abuse, and should encourage trainees to treat informed consent as a process rather than a one-time event.
RISK MANAGEMENT

- The practice of focusing on the identification, evaluation, and treatment of problems that may injure clients, lead to filing of an ethics complaint, or a malpractice action

- Informed consent, documentation, and consultation are key elements of risk management
Bernard and Goodyear suggest three levels of informed consent for supervision:

- (a) Client consent to treatment with the supervisee
- (b) Client consent to having their case supervised
- (c) Supervisee consent to supervision

Falvey added that “supervisees consent to supervision with a given supervisory” and “institutional consent to comply with the clinical, ethical, and legal parameters of supervision for the discipline(s) involved”
SUPERVISION: FIRST SESSION CHECKLIST

1. Build rapport
2. Review supervision contract
3. Inform supervisee of factors regarding supervisor that might influence supervisee’s decision to work with him/her
4. Address cultural differences/similarities and how they might affect the supervisory relationship
5. Review the ethical issues relevant to supervision
6. Review the process of supervision
SUPERVISION: FIRST SESSION CHECKLIST (CON’TD)

- 7. Review policies and procedures
- 8. Review all forms
- 9. Discuss crisis management strategies
- 10. Structure supervision (day, time, length)
- 11. Assess supervisee’s competence (including evidence-based performance)
- 12. Establish goals and objectives
- 13. Have supervisees sign relevant documents and indicated acceptance of them after reviewing them and having questions answered
DON’T SUPERVISE BEYOND YOUR COMPETENCE

- If a client of the supervisee has a presenting problem that is outside the supervisor’s scope of training, make alternative arrangements for supervision of that client’s case, or make an appropriate referral for the clients.

- This type of responsible practice requires careful screening and monitoring, not only of supervisees but of each of the clients they serve.
EVALUATE AND MONITOR SUPERVISEE’S COMPETENCE

- Supervisors are responsible for making sure supervisees practice within their scope of competence.

- To appropriately assign clients and duties to supervisees, it is necessary to assess their level of knowledge and skill.
BE AVAILABLE FOR SUPERVISION CONSISTENTLY

- Competent supervision requires much more than the understood hour per week face-to-face meeting with a supervisee.

- Critical incidents in mental health setting require immediate, complex decision making and action.

- The safety of clients and others can be at risk.
FORMULATE A SOUND SUPERVISION CONTRACT

- The use of a contract in supervision is essential to protect the client, the agency, your supervisee, and yourself as the supervisor.

- A well-formulated contract provides a clear blueprint for what is to occur in supervision and serves as a reference if problems should occur in the supervisory relationship.
FORMULATE A SOUND SUPERVISION CONTRACT (CONT’D)

- Suggested items for inclusion in the contract are:
  - Purpose and goals of supervision
  - Logistics of supervision including frequency, duration, and structure of meetings
  - Roles and responsibilities of supervisor and supervisee
  - Guidelines about situations in which the supervisor expects to be consulted
  - Brief description of supervisor’s background, experience, and areas of expertise
  - The model and methods of supervision to be used
  - Documentation responsibilities of supervisor and supervisee
FORMULATE A SOUND SUPERVISION CONTRACT (CONT’D)

- Evaluation methods to be used including schedule, structure, format, and use
- Feedback and evaluation plan including due process
- Supervisee’s commitment to follow all applicable agency policies, professional licensing statues, and ethical standards
- Supervisee’s agreement to maintain healthy boundaries with clients
- Supervisee’s agreement to function within the boundaries of his or her competence
- Supervisee’s commitment to provide informed consent to clients
- Reporting procedures for legal, ethical, and emergency situations
- Confidentiality policy
- A statement of responsibility regarding multicultural issues
- Financial arrangements
The types of written documents needed may include but certainly are not limited to the following: state legal statutes, codes of ethics, informed consent, emergency procedures, supervisee-client rights, and agency policies and procedures.
DOCUMENT ALL SUPERVISORY ACTIVITIES

- It is absolutely necessary that some attention to be given to this important area.
- Supervisee documentation include client information sheets, intake reports, psychological evaluations, treatment plans, progress notes, and termination summaries.
- Supervisory documentation consists of three primary components:
  - (a) Supervisory agreements and contracts
  - (b) Supervision notes
  - (c) Feedback and evaluation materials
CONSULT WITH APPROPRIATE PROFESSIONALS

- Need to make the supervisor aware of any potential risks posed by minors
- Parents or guardians also have a legal right to know when their child may be in danger
It is also considered good practice to require supervisees to sign a statement verifying their review of documents, policies, ethics, and procedures in order to possibly limit liability should an ethical violation occur.

The supervisor can help the supervisee assess the situation, determine if there is an imminent risk, decide whether reporting to the authorities is required legally or is necessary for the protection of those involved even if there is not requirement for reporting, and devise a plan for how to proceed.
USE MULTIPLE METHODS OF SUPERVISION

- Relying on self-report as the sole method of supervision is no longer acceptable.

- Supervision standards regarding monitoring supervisees’ work state that “reasonable steps” should be taken to ensure appropriate client care.
IMPLEMENT A FEEDBACK AND EVALUATION PLAN

- It is the supervisor’s duty to assess and evaluate supervisees’ performance.

- Supervisors are typically expected to evaluate supervisees’ progress over a specified period of time and to render judgment regarding supervisees’ competence to practice independently.
**Provide Complain Procedures**

- It is possible that the supervisee will experience dissatisfaction at some time during the supervisory process.

- It is useful to provide open communication and opportunities early on for supervisees to discuss both strengths and weaknesses they perceived in the supervisory process.
Clearly Address the Endorsement Process

- Supervisors are often looked to for endorsement through letter of recommendation for licensure, certification, and employment.

- Informing supervisees about the importance of gatekeeping minimizes related misunderstanding.

- Examples include noncompliance with supervisory directive, concealment or misrepresentation of relevant information, violations of ethical standards or laws, frequent tardiness or absence, and inability to practice with reasonable skill and safety.
PURCHASE AND VERIFY PROFESSIONAL LIABILITY INSURANCE COVERAGE

- Professional liability insurance is a must for both supervisors and supervisees

- Check with the company that holds the malpractice policy, prior to purchase, to confirm coverage for damages incurred outside of direct service or due to negligent supervision

- In addition, confirm that coverage applies to supervisees’ level of education or training
EVALUATE AND SCREEN ALL CLIENTS UNDER THE SUPERVISEE’S CARE

- The supervisor has the responsibility to continue assessing each client under the care of the supervisee.

- From a legal perspective, it is expected that supervisors will have adequate knowledge of each of their supervisee’s clients.

- Falvey defined this requirement as meaning that supervisors meet with every one of their supervisee’s clients.
Establish a Policy for Ensuring Confidentiality

- Establish a process to ensure confidentiality

- Have a written agreement with supervisees that includes the right of the supervisor to have consultative discussions with appropriate colleagues regarding the supervisory relationship and duties

- Have supervisees use appropriate disclosure statements for clients describing the supervision process, clearly identifying the supervisee as “in training,” and the limits of confidentiality and privilege

- Review the ethics codes regarding confidentiality as part of the orientation to supervision and discuss these principles with supervisees
INCORPORATE INFORMED CONSENT INTO PRACTICE

- To comply with HIPAA, as part of the informed consent process, supervisors must also inform their supervisees’ clients about the purpose of supervision and the procedures that will be used to carry out supervision and maintain the confidentiality of clients’ disclosures.