THE UNIVERSITY OF HONG KONG

M.Soc.Sc. in Clin. Psy.

Clinical Supervisor's Corner

Self-Learning Modules on Core Competencies for Clinical Supervision

Module 7: Ethical & Legal Issues, and Risk Management

Department of Psychology
The University of Hong Kong
香港大學心理學系

7.1 Code of Conduct

- Please see Section 3.4 for the Code of Professional Conduct set out by HKPS. Useful information from literature and overseas professional organizations are summarized below for supervisor's further reference.

7.2 Ethical issues related to supervision

7.2.1 Competence

- Psychologists are to work within the boundaries of their competence based on their education, training, supervised experience, consultation, study, or professional experience. With reference to supervisee competence, "[p]sychologists who delegate work to …supervisees…take reasonable steps to… (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided and (3) see that such persons perform these services competently" (APA, 2002a).

7.2 Ethical issues related to supervision

7.2.2 Due Process

- This involves the supervisee having a clear understanding of the requirements of the placement, knowledge of the means and tools of evaluation, opportunity for notice, defence and appeal should the supervisory process be found problematic (Falender & Shafranske, 2004).
- Evaluating supervisees in areas not clearly defined from the onset (e.g. intrapersonal functioning) violates their due-process and informed-consent rights (Forrest, Elman, Gizara, & Vacha-Haase, 1999).

7.2 Ethical issues related to supervision

7.2.3 Confidentiality

- In the context of supervision, all ethical and legal considerations must be applied to the rights of the client to confidentiality and to the maintenance of client information in the context of supervisor-supervisee or supervisor-supervisor communications (Falender & Shafranske, 2004). Attention is drawn to laying out confidentiality regarding transmission of client data in electronic form. The form of consent and proximity in the timing of consent in relation to the release of information should also be specific.
- Confidentiality concerning client data as well as trainee behaviour and records would require informed consent that articulates to all parties involved the entire range of review and information sharing that may occur.

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7.2 Ethical issues related to supervision

7.2.4 Multiple and dual relationships

- In the supervisory and therapeutic process, issues of emotional involvement, power differential, exploitation, transference, and placement of trainees in a situation that is difficult to refuse are affected by a dual or multiple relationships (Sonne, 1999). 'Psychologists who delegate work to … supervisees…take reasonable steps to … avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity" (APA, 2002a).
- Yet in small communities, application of the code may be complicated. As such, "[m]ultiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical" (APA, 2002a).

7.2 Ethical issues related to supervision

7.2.5 Boundary Behaviours

- Sensitivity to and management of boundary behaviours that potentially transgress the professional or clinical role is essential.
- Identification of danger signals, use of roleplay, and implementation of a nonjudgmental approach by supervisors to disclosures are essential.

7.3 Legal Matters

- In US practice, the principle of vicarious liability states the supervisor's responsibility over a supervisee's negligence or malpractice. It holds that "one who occupies a position of authority or direct control over another (such as a master and servant, employer and employee, or supervisor and supervisee) can be held legally liable for the damages of another suffered as a result of the negligence of the subordinate" (Disney & Stephens, 1994). Therefore, even if the intern was the therapist, liability can be based on a supervisor's erroneous actions or omissions.

7.3 Legal Matters

Whether the supervisee's alleged negligence implicates the supervisor could depend on the following factors (Disney & Stephens, 1994):

- the supervisor's power to control the supervisee (e.g. on the basis of administrative authority or ability to gain knowledge of what is being done);
- the supervisee's duty to perform the act (e.g. in relation to what a reasonable supervisor in the same situation would assume);
- the time, place, and purpose of the act (e.g. during formal supervision or within the course and scope of the relationship)
- the motivation of the supervisee for committing the act (e.g. beneficence or misconduct);
- whether the supervisor could have reasonably expected that the supervisee would commit the act
- standard of care, i.e. whether a reasonable professional would do in the same circumstances (Falvey, 2002)

In US, the 'borrowed-servant' rule refers that supervisory liability may be shared between the university and the other setting where the student is placed. If a negligent act occurs, it will be determined which employer had control of the supervisee by examining affiliation agreements that define the conditions of placement (Falender & Shafranske, 2004).

7.4 Risk Management

7.4.1 Supervisory liability

To minimize the risk of supervisory liability, the following arrangements can be considered (Disney and Stephens, 1994):

- There is a formal written policy that informs the legal and ethical standards and consequences of such actions and is signed by the supervisee
- There are practices for case review, treatment planning, and a review of goals set for and the ongoing progress of each client

7.4 Risk Management

7.4.2 Duty to warn and duty to protect

- Ultimate responsibility in duty-to-warn cases lies with the supervisor (Falender & Shafranske, 2004). For a novice trainee, it is important the supervisor monitor very closely or even work along with the trainee to implement requisite steps under circumstances where potential danger has been identified. Trainees should be introduced the steps for duty-to-warn-and-protect situations. Techniques for risk assessment and management of violent clients, as well as suicide risk assessment should be introduced.

7.4 Risk Management

7.4.3 Documentation

Documentation of supervisory work is recommended (Falender & Shafranske, 2004):

- the supervisory contract
- the supervisee's application materials (e.g. a curriculum vitae)
- all performance evaluations that have been conducted
- a monitoring log containing information such as the list of cases the supervisee is carrying, dates of supervision of each, presentation of problems and critical issues; directives or directions the supervisee is following in treatment; changes in the diagnosis or treatment plan; discussions of case progress; details of safety, ethical, legal, or risk management concerns raised and their resolution; follow up reports; details of supervisory or supervisee problems and their resolution; supervisee attendance records for supervision appointments

7.5 Guidelines for ethical decision-making

7.5.1 Priorities

- The Association for Counsellor Education and Supervision (1995) advised that decision-making should be guided by priorities in the following order:
  1. client welfare
  2. supervisee welfare
  3. supervisor welfare
  4. program or agency service and administrative needs

7.5 Guidelines for ethical decision-making

7.5.2 Steps in ethical problem-solving

A. To assist in problem solving of ethical situations, Koocher and Keith-Spiegel (1998) proposed the following steps:

- Determine if the matter is an ethical one
- Consult applicable ethical guidelines for a possible mechanism for resolution
- Consider all sources that might influence your decision making
- Consult with a trusted colleague
- Evaluate the rights, responsibilities and vulnerability of all affected parties
- Generate alternative decisions
- Consider the consequences of each decision
- Make the decision
- Implement the decision

7.5 Guidelines for ethical decision-making

B. Another problem solving approach, taking emotional responses into consideration, is proposed by Barret, Kitchener, and Burris (2001):

1. Pause and identify personal responses to the case
2. Review the facts
3. Conceptualize a preliminary plan
4. Analyze the plan in terms of professional codes of ethics, foundational ethical principles (e.g. autonomy, beneficence, do no harm, fidelity, and justice) to determine whether the plan is congruent
5. Examine the legal consequences of the preliminary plan
6. Refine the plan to balance clinical, ethical, and legal considerations so that it
    i. is congruent with one's personal values
    ii. advances clinical interests
    iii. is operable within agency policies and professional ethics codes
    iv. minimizes harm to client and relevant others,
    v. maximizes the effect of all other ethical principles
    vi. operates within the law
7. Choose a course of action and share it with the client
8. Implement the course of action, and monitor and document the outcomes

In the case of supervisor-supervisee dilemmas, Steps 1 to 6 necessitate multilevel considerations of supervisor, supervisee, and client (Falender & Shafranske, 2004).

7.6 Further references

- Ethical Principles of Psychologists and Code of Conduct (American Psychological Association, 2016).https://www.apa.org/ethics/code/

- Code of Conduct, Ethical Principles & Guidelines (British Psychological Society, 2018).
  https://www.bps.org.uk/sites/bps.org.uk/files/Policy%20-%20Files/BPS%20Code%20of%20Ethics%20and%20Conduct%20%28Updated%20July%202018%29.pdf

- Guidelines for Clinical Psychology Services (British Psychological Society, 2011).
  https://www1.bps.org.uk/system/files/Public%20files/DCP/cat-804.pdf