Ethical and Legal Considerations

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Issues for Supervisors

Ethically Begin Supervision with Informed Consent; Can take the form of a Professional Disclosure Statement (Cobia & Boes, 2000)

Purposes of Informed Consent:
- Protect the welfare of client
- Protect supervisee well-being and promote professional growth
- Protect the supervisor and profession

Informed consent related to client:
- “Informed consent requires that the recipient of any service or intervention is sufficiently educated about what is to transpire, the potential risks, and alternative services or interventions. So that he or she can make an intelligent decision about his or her participation” (Bernard, 1994)
- Client understanding and agreeing to the therapeutic procedures, supervision, the supervisee’s level of training, and benefits from the supervision process (Bernard & Goodyear, 2009)
- “The principle of autonomy is consistent with counseling principles that require counselors to respect their clients as capable individuals who have the right to make choices regarding entering into counseling and being actively involved in the counseling process“ (Glossoff & Pate, 2002)
- “…counselors who have rigid ideas about spirituality should consider clearly stating their spiritual or anti-spiritual beliefs and/or faith-based framework within informed consent statements” (Steen, Engels, & Thweatt III, 2006, p. 115).

Informed consent related to supervisee:
- Ensure supervisee understanding of supervision
- Professional disclosure covering issues of confidentiality, multiple relationships, competence, evaluation, and due process
Issues for Supervisors

**Multiple relationships (old term is Dual Relationships)**
- Proactive stance -- educators and supervisors need to warn supervisees and counselors in training about the “powerful effects on attraction of familiarity, similarity, self-disclosure, and physical closeness” (Bernard & Goodyear, 2009, p. 59)
- Differs from a therapeutic relationship
- Need for clear contract between supervisor and supervisee
- Professional cloning – motivated by desire of supervisor or educator to shape their supervisee into a likeness of themselves rather than encouraging individuation (Davenport, 1987)
- Sexual relationships are most prevalent ethical violations
  - sexual attraction issues
  - sexual harassment – never acceptable
  - consensual (but hidden sex)
  - intimate committed relationships – gray area but tolerable
- Non-sexual relationships – most difficult area to identify boundaries

**Competence**
- Be aware of and monitor supervisee clinical competence
  - Greatest clinical and ethical challenge for supervisor is balancing client care with care for supervisee
- Supervisors must be competent to supervise
  - Training – must be more advanced in all areas practicing supervision (Bernard & Goodyear, 2009)
  - Supervision of supervision
  - Continuing competence as a therapist
- Supervision should be limited to the supervisor’s competence as delineated in the professional disclosure statement (Cobia & Boes, 2000)
Issues for Supervisors

Confidentiality
 Defined as “involves professional ethics rather than any legalism and indicates an explicit promise or contract to reveal nothing about an individual except under conditions agreed to by the source of subject” (Bernard & Goodyear, 2009, p. 68).

Differs from
 Privacy: “client’s right to not have private information divulged without informed consent, including the information gained in therapy (Bernard & Goodyear, 2009, p. 68)

Privileged communication: “a legal concept on state statute…Right of clients not to have their confidential communications used in open court without their consent (Bernard & Goodyear, 2009, p. 68)

Marketplace issues
 Supervisee payment to supervisor for supervision is an ethical concern
 Illegal for supervisor to sign off on supervisee’s work for third party reimbursement
Issues for Supervisees

Themes of Supervisee’s Most Common Transgressions (Worthington, Tan, & Poulin, 2002):
- Intentional non-disclosure to supervisor of important client information
- Mismanagement of case records
- Too autonomous from supervisor
- Personal biases withheld from supervisor
- Poor conflict resolution with supervisor
- Lack of professional development

Possible Reasons for Unethical Behaviors (Worthington, Tan, & Poulin, 2002):
- An indirect way of coping with or expressing feelings towards the supervisor
- Personal problems affect judgment
- Feel they should be given more professional autonomy
- Relationship with supervisor feels unsafe
- Feeling like they sometimes know more than their supervisors
- Workload is too heavy
Legal Issues

Ethical versus Legal issues:
- "determined by whether the aggrieved choose to bring their complaints to a regulatory body [ethical] or to civil court [legal]” (Bernard & Goodyear, 2009, p. 70).
- See also ACA Code Section F: Supervision, Training, and Teaching and Section H: Resolving Ethical Issues (American Counseling Association, 2005).

Legal Issues for Supervisors:
- Malpractice: “harm to another individual due to negligence consisting of the breach of a professional duty or standard of care” (Bernard & Goodyear, 2009, p. 71)
  - Example of Duty to Warn: Supervisors need to educate supervisees on conditions for duty to warn
- Direct Liability: “when the actions of the supervisor were themselves the cause of harm” (Bernard & Goodyear, 2009, p. 72)
- Vicarious Liability: “being held liable for the actions of the supervisee when these were not suggested or perhaps even known by the supervisor” (Bernard & Goodyear, 2009, p. 73)

Prevention is Key (Bernard & Goodyear, 2009, p. 74):
- Create a trusting atmosphere with supervisees
- Keep current on legal issues affecting the mental health profession
- Have legal counsel available that specializes in malpractice litigation
- Ensure liability insurance for both supervisor and supervisee
Making an Ethical Decision

Goal is to be proactive; Make ethics a priority (McGee, 2005)
Utilize case studies and exploratory activities in training.

Forester-Miller and Davis (1996) suggest seven steps for ethical decision making:
1. Identify the problem
2. Apply the ACA Code of Ethics.
3. Determine the nature and dimensions of the dilemma.
4. Generate potential courses of action.
5. Consider the potential consequences of all options and determine a course of action.
6. Evaluate the selected course of action.
7. Implement the course of action.

Hansen and Goldberg’s Model (as cited in Bernard & Goodyear, 2009):
- Take into account the moral principles.
- Consider clinical and cultural factors.
- Consider professional codes of ethics.
- Refer to agency or employer policies.
- Recognize federal, state, and local statutes.
- Consider the rules and regulations that elaborate statutes.
- Consult case law.
References


