

7.10 Ethical and Legal Considerations

Clinical supervisors are accountable to multiple ethical and legal codes of conduct, both directly in their own practice and in overseeing the work of their supervisees. These include: professional bodies in which they and their supervisees are members; local, state and federal laws; Victorian AOD sector standards and their organisation's policies. Supervisors must always bear in mind that the parties involved in supervision include not only the supervisor and the supervisee, but also the supervisee's clients and the employing organisation.

It is a common aspect of supervisory practice to encounter difficult and murky ethical problems from time to time. When determining a way forward in resolving complex ethical dilemmas posed in supervision, Page and Wosket recommend following five general principles of ethical decision-making (see 7.10.2).

Ethical and legal issues that are critical to clinical supervisors include: (1) vicarious liability, (2) dual relationships and boundary concerns, (3) informed consent, (4) confidentiality, and (5) supervisor ethics (see 7.10.1 -7.10.3).

7.10.1 Clinical Supervisor Ethics

Clinical supervisors adhere to the same standards and ethics as counsellors, and as others who share their credentialing body, regarding most issues. There are also codes of conduct and standards which they must maintain, and support in others, related to AOD work and to their particular organisational context.

In addition to those codes of conduct, clinical supervisors should adhere to the following:

Code of Ethics and Standards of Practice

The supervisor should ensure the supervisee understands the appropriate Code of Ethics and Standards of Practice and legal responsibilities. The supervisor and supervisee ought to discuss sections applicable to the worker.

Dual Relationships

Since a power differential exists in the supervisory relationship, the supervisor shall not utilise this differential to her or his gain. Since dual relationships may affect the objectivity of the supervisor, the supervisee should not be asked to engage in social interaction that would compromise the professional nature of the supervisory relationship.

Due Process

During the initial meeting, supervisors should provide the supervisee information regarding expectations, goals and roles of the supervisory process. The supervisee has the right to regular verbal feedback and periodic formal written feedback, signed by both individuals.

Evaluation

During the initial supervisory session, the supervisor should provide the supervisee with a copy of the evaluation instrument used to assess the supervisee's progress.

Informed Consent

The supervisee must inform the clients that he or she discusses their cases with a clinical supervisor, and must receive written permission from the client to audiotape or videotape sessions (also see Confidentiality 7.10.1.6.)

Confidentiality

The counselling relationship, assessments, records, and correspondences must remain confidential. Failure to keep information confidential is a violation of ethical code and the counsellor, supervisor and/or organisations may be subject to a malpractice suit. The client must be informed that the worker receives supervision and that his or her details may be discussed.

Vicarious Liability

The supervisor is ultimately liable for the welfare of the supervisee's clients. The supervisee is expected to discuss the counselling process and individual concerns of each client with the supervisor.

Avoiding Professional Isolation

The supervisor should consult with peers regarding supervisory concerns and issues.

Termination of Supervision

The supervisor should discuss termination of the supervisory relationship, help the supervisee identify areas for continued growth, and explore professional goals.

Some general principles of ethical decision-making, as well as a more detailed explanation of vicarious liability, dual relationships and boundary concerns, informed consent, and confidentiality can be found in sections 7.10.2 -7.10.3.

References for this section: The Bouverie Centre (Moloney, Vivekananda & Weir, 2007).

7.10.2 General Principles of Ethical Decision-Making

The following principles of ethical decision-making were adapted by Page and Wosket from the medical profession, for the benefit of helping professionals (Page & Wosket, cited in Scaife, 2001):

- Autonomy - the principle that individuals have the right to freedom and action

- Beneficence - the principle that actions taken should do good, using knowledge to promote human welfare
- Fidelity - being faithful to promises made
- Justice - ensuring that people are treated fairly
- Non-maleficence - striving to prevent harm

Stadler (1986, cited in Moloney et al., 2007) suggests that people making difficult ethical decisions explore an additional three moral principles:

- Universality - do my actions stand the test of generalisation? Given the context, would most people think my chosen course of action was reasonable?
- Publicity - am I prepared to have my actions publicly scrutinised?
- Justice - would other people find my actions fair and reasonable? Would I apply the same treatment to another person in similar circumstances?

References for this section: Scaife (2001); Stadler (1986, cited in The Bouverie Centre [Moloney, Vivekananda & Weir 2007]).

Most professional Codes of Ethics are about what we *shouldn't* do. Michael Carroll (2010) took on the task of assisting an organisation to capture and develop the positive values which they wanted to live to in their work. This led to his notion of “ethical maturity – having the reflective, rational and emotional capacity to decide what actions are right and/or wrong, having the courage to do it and being publicly accountable for my decision.” (Carroll, 2010)

7.10.3 Defining Ethical Terms

Vicarious Liability

Vicarious liability is the duty of care which the clinical supervisor holds in relation to the supervisee's clients. The implications of this are that the supervisor may be held ethically and legally responsible if harm comes to clients as a result of negligent, or incompetent supervision practices (e.g., a supervisor failing to recommend a suicide evaluation of a severely depressed client, or suggesting herbal remedies as a viable treatment for psychosis). It is important for supervisors to bear in mind that the line of responsibility leads back to them, especially when overseeing inexperienced or over-worked supervisees struggling with their caseloads.

Reference for this topic: Center for Substance Abuse Treatment (2009).

Dual relationships

Dual relationships and boundary concerns are relevant to the client-supervisor relationship, the supervisee-client relationship, and the supervisor-client relationship. Clinical supervisors are expected to maintain appropriate boundaries with their supervisees, and to be aware of signs that a supervisee's boundaries with one or more clients are crossing into

potentially vague or dangerous territory. Additionally, the supervisor has an indirect relationship with the clients whose cases are brought into supervision sessions, which means that they have a responsibility to protect the confidentiality of those clients and not to engage in social relationships with them. These are grey rather than black and white areas of supervisory practice and must be considered on a case-by-case basis when an issue arises.

Reference for this topic: Center for Substance Abuse Treatment (2009).

Informed consent

Informed consent should be part of the supervisory relationship, just as it is part of the client-counsellor relationship. The areas of informed consent should be covered in the contracting stage of supervision and should be reiterated as necessary throughout the course of the supervision relationship. The process should address the following topics:

- The purpose of supervision: the structure and mutual understanding of supervision
 - goals of supervision
 - how goals will be evaluated and the specific timeframes
 - specific expectations of the supervisor and the supervisee
 - integration of theoretical models
- Professional disclosure: information about the supervisor that includes credentials and qualifications and approach to supervision
 - educational background
 - training experiences
 - theoretical orientation
 - clinical competence with various issues, models, techniques, populations
 - sense of mission or purpose in the field
- Supervision process: methods and format of supervision
 - individual, group, peer, dyadic
 - methods of direct observation
 - permission to record sessions on audio- or videotape

Reference for this topic: adapted from Falvey, 2007, cited in Center for Substance Abuse Treatment (2009).

Due process

Due process includes written procedures to be followed when a grievance or complaint has been made against the administration, the supervisor, or the counsellor. It ensures that all sides are heard and that the complaint and response to the complaint receive due consideration. In this case, informed consent means that all parties are aware of the process for lodging a complaint.

Reference for this topic: adapted from Falvey, 2007, cited in Center for Substance Abuse Treatment (2009).

Ethical and legal issues

Policies, regulations, and laws regarding supervisory and therapeutic relationships include:

- emergency and back-up procedures (e.g., supervisor accessibility)
- ethical codes of conduct
- process for discussing ethical dilemmas
- confidentiality regarding information discussed in supervision
- confidentiality issues when more than one supervisee is involved
- dual roles and relationships
- process for addressing supervisee issues (e.g., burnout, countertransference)
- a statement of agreement
- signed acknowledgement by all parties that they understand and agree to comply with the contract

Reference for this topic: adapted from Falvey, 2007, cited in Center for Substance Abuse Treatment (2009).

Confidentiality

The parameters of confidentiality should be clearly explained to workers engaging in a clinical supervision relationship and should be included in the supervision contract. Just as with the counselling relationship, there are limits to what is and is not kept private. Supervisors must not only waive confidentiality and/or intervene when harm to the supervisee, clients, or others is at stake (duty of care, and duty to warn), but also when carrying out evaluations of supervisees' work that is shared with line managers and other organisational administrators.

Other circumstances under which confidentiality may be waived include: a breach of the organisation's codes of conduct; a breach of law (e.g., failure to report abuse); and a breach of professional ethics. When information gained in the course of clinical supervision is to be shared with others (e.g., line managers, professional boards), it is important that the supervisee be informed and, to the extent possible, included in the process of disclosure.

References for this section: Center for Substance Abuse Treatment (2009).