Clinical Supervisors: How Well Do You Know Your Ethical Obligations?

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SITUATION 1: *A counselor you supervise has a client who has difficulty getting to the clinic for outpatient sessions every week due to transportation problems. Unbeknownst to you, the counselor has previously, on occasion, provided clinical sessions over the internet using one of the more commonly used free platforms for face-to-face communication. However, this particular platform is not secure and thus does not protect the information shared during the conversations. The counselor was very proud of what he or she saw to be a creative way to conduct therapy, but did so without discussing this with you; nor did the counselor ensure that the method used met all confidentiality regulations.*

SITUATION 2: *Another supervisee was assigned a case of someone known to him or her (not a close friend but an acquaintance). This was not brought to your attention at the onset of the assignment; in fact this did not become apparent until your supervisee was seeing this person for several weeks (and had developed what appeared to be an effective clinical relationship). As it turns out, this client is a friend of the supervisee's spouse and there is a rare chance they could see each other at social events. The supervisee sees nothing out of the ordinary, but felt it necessary to inform you since one of these encounters occurred during the last week.*

Both of these situations have at least one thing in common: the supervisor was initially unaware of a situation that had ethical ramifications. The work of addiction professionals can be a challenging journey with surprises that may appear at any turn. Counselors can be suddenly caught off guard and may react by instinct without thinking things through. Ethical decision-making is a continual and active process as clinicians are faced with ethical dilemmas daily, and without proper training or guidance, one is at risk for making decisions that take him or her down the wrong path. Thus, the clinical supervisor plays a vital role, not only in maintaining awareness of what is going on with each case, but in teaching, mentoring, and modeling ethical decision-making as a component of the supervisee's ethical and professional growth.

Supervisory Roles and Responsibilities

Clinical supervisors are continually faced with ethical obligations in their supervisory roles and must be readily available to provide guidance and support to counselors who face decision-making dilemmas. As a component of supervisory guidance, perceptive clinical supervisors help counselors recognize these dilemmas when they occur and mentor them in developing a framework of ethical decision-making. Underlying this obligation is the expectation that supervisors are knowledgeable and skilled in the practice of clinical supervision. Supervisory training is addressed in the NAADAC/NCC AP Code of Ethics (2016): "Addiction Professionals shall complete training specific to clinical supervision prior to offering or providing clinical supervision to students or other professionals" (Principle VII-2). Without such training, supervisors will likely lack the skills necessary to ensure the effective and ethical performance of their supervisees and may be at risk for being vicariously liable for the actions of supervisees (Corey, Corey, Corey, and Callanan, 2015).

Clinical supervisors take on multiple roles, each of which has the potential of providing significant influence in the supervisory relationship (and as I often say when training supervisors, "It's all about the relationship"). This may include the roles of teacher, consultant, coach, evaluator, role model, advocate, or variations and/or combinations of these noteworthy relational components. As a relationship is formed through any of these roles, a primary obligation of the clinical supervisor is to ensure the supervisee delivers counseling services that are effective and within the bounds of ethical standards. With this in mind, I consider, as a primary goal of clinical supervision, the promotion of independence and autonomy by the supervisee. When I conduct clinical supervision training, I often ask supervisors to consider, as an ultimate by-product of professional development, the supervisee's ability to "self-supervise." Of course, this does not mean that when one reaches this point, he or she can go without any supervision. What it does mean, however, is that the supervisee has reached a point of autonomy where he or she is making accurate and effective decisions regarding client care. When a counselor has reached this level of growth, he or she will likely have also developed an ability to "think ethically."

Teaching Ethical Decision-Making

One means of guiding counselors in their development of a framework for ethical decision-making is to pose a series of questions that have the intent to increase a counselor's awareness of his or her ethical responsibilities. These are questions that address what many believe to be the four primary principles of biomedical ethics. These principles, applicable to all helping professions, are: autonomy, beneficence, non-malfeasance, and justice (Beauchamp & Childress, 2012). Note also that these four principles are included among a list of 17 items in the NAADAC/NCC AP Code of Ethics (2016) that counselors are recommended to follow when making ethical decisions.

The questions that address these four principles are:

1. Is the counselor giving the client the freedom to make choices about his or her direction in treatment? *(autonomy)*
2. Is the counselor providing hope, encouragement, and support for the client's decisions that are individualized, in line with the client's values, and in the client's best interest regarding change toward successful recovery? *(beneficence)*
3. Is the counselor working with the client in a way that will "do no harm"? *(non-malfeasance)*
4. Are ethical codes, laws, and universal values being followed by the counselor and is the counselor providing fairness to all that are involved with this client's treatment? *(justice)*

You might also want to take a look at the other 13 principles listed in the NAADAC/NCC AP Code of Ethics (2016) and come up with similar questions for each one. Posing these or similar questions not only gives the supervisor valuable information about a counselor's work with a client, but can also be a catalyst in promoting ethical thinking by the counselor. Supervisors both must be aware of what is occurring in the sessions conducted by supervisee, and are obligated to make sure what is occurring is ethically sound and clearly understood by the counselor. Such awareness not only ensures client welfare, but it also protects the supervisor and the agency from being held liable for any negligence of the part of the counselor.

It is important to note that the supervisor and the agency may be held liable for damages, solely as a result of the supervisory relationship, occasioned by the professional negligence of a supervisee. According to Falvey (as cited by Bernard and Goodyear, 2014), three conditions must be established that clarify the existence of a legal supervisory relationship: 1) the supervisee agrees to work under the direction and control of the supervisor; 2) the supervisee is acting according to a defined set of duties and tasks expected by the supervisor; and 3) the supervisor has the authority to control the work of the supervisee.

An important factor that would determine supervisor liability is whether or not the action in question falls within the scope of the supervisory relationship (Bernard and Goodyear, 2014). In other words, if the act occurred outside of the place of work and the supervisor did not have any reasonable expectation that the supervisee would commit the act under question, then the supervisor would not likely be held liable.

Most clinical relationships in licensed or accredited treatment programs meet the conditions of legal supervisory relationships. If these conditions are met and the supervisor is not aware of what is going on between the counselor and client, when professional negligence occurs, the supervisor could be found to be vicariously liable in a malpractice suit. The key to protection against vicarious liability is to have proof (through documentation) that clinical supervision is regularly occurring and that the material discussed in supervision follows ethical and legal guidelines that will promote professional growth for the supervisee and, most importantly, the welfare of the clients being treated. Most instances of a supervisor being named in a malpractice suit occur when negligent acts of a supervisee are performed within the scope of the supervisory relationship (Bernard and Goodyear, 2014). For instance, the negligence may have occurred without the supervisor's knowledge and, thus, the supervisor was unable to prove (through documentation) that a reasonable effort to supervise was made. An example of not making a reasonable effort to supervise is merely (and occasionally) providing administrative oversight of a counselor's work.

Modeling Ethical Behavior

As noted previously, clinical supervision is *all about the relationship*. Without an effective working relationship that comes with "making a reasonable effort to supervise," supervisees are left fending for themselves, which leaves all involved (the counselor, the supervisor, and the agency) in a tenuous position with regards to ethical conduct. On the other hand, the supervisor who provides ongoing and effective clinical supervision will be in an excellent position to foster the professional development of the supervisee. A key component of such development is the modeling of ethical behavior by the supervisor. Modeling by the supervisor (and hence observation by the supervisee) can be a powerful means promoting ethical behavior (Bernard & Goodyear, 2014).

In supervision, we often talk about "parallel process." The classic definition of a parallel process is when a counselor's conduct parallels that of his or her client in the supervisory relationship (as "upward" parallel process). However, effective modeling by the supervisor is an example of "downward" parallel process. In either direction, the parallel process usually occurs in mentoring relationships where one subconsciously begins to take on certain aspects of his or her mentor's professional behavior. When supervisors form a respectful working relationship with supervisees, the actions of the supervisor become significant (either consciously or unconsciously) to the supervisee. Supervisors are continually modeling behavior. Depending on what kind of behavior they are modeling, this can have a significant impact on learning by the supervisee. The best way to model ethically sound clinical skills is to do co-therapy with supervisees. Co-therapy in supervision provides two simultaneous supervisory methods: observation of the counselor's skills and modeling by the supervisor.

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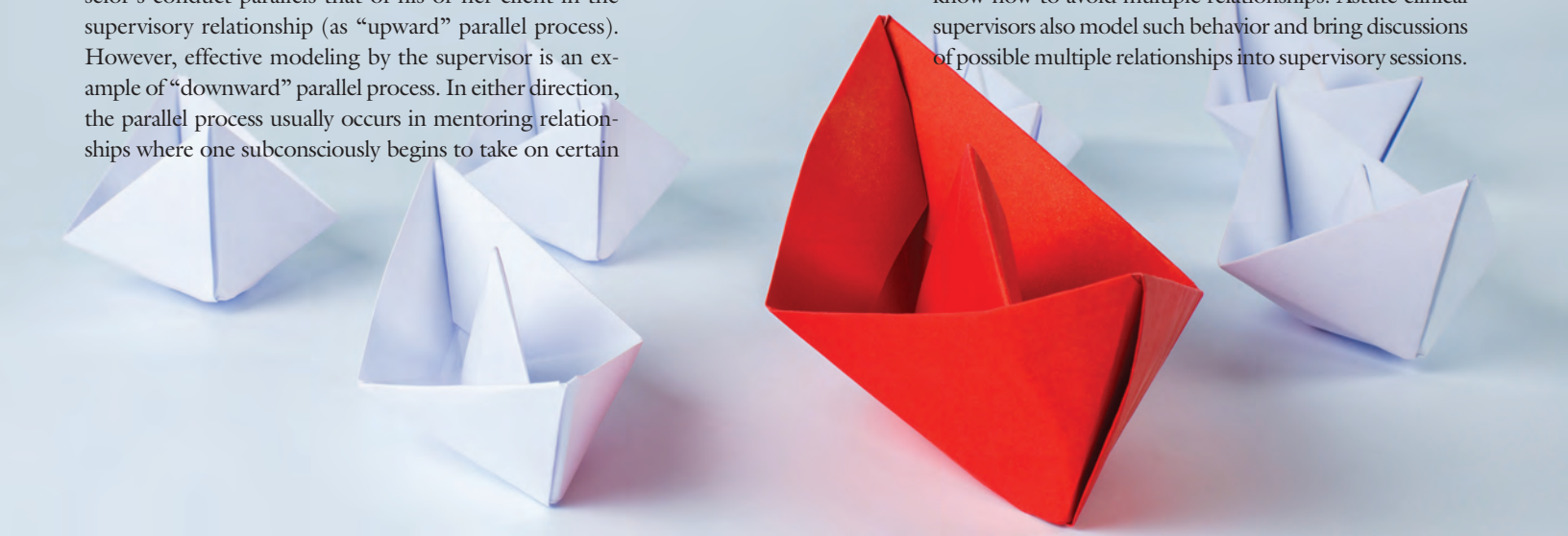
Multiple Relationships

Another area of concern that can occur in both the clinical realm as well as within clinical supervision is the formation of multiple relationships. According to Bernard and Goodyear (2014), "multiple relationships occur when people have more than one social role in relationship toward each other" (p.259). Multiple relationships are problematic when either of two things occur: when there is a power differential (as in the case of a counselor-client relationship or a supervisor-counselor relationship) and when the focus of the primary relationship is at risk of being super ceded by another relationship (such as a social relationship). In both clinical and supervisory relationships, boundaries exist that can prevent multiple relationships. Of course, the boundaries in the counselor-client relationship are more firmly established and more clearly defined than those in the supervisor-supervisee relationship, but boundaries in both must be identified and respected. Not all boundaries in a supervisory relationship are problematic, but they can become problematic when, by crossing such boundaries, the view of the individuals in the relationship become clouded. Issues such as favoritism, exploitation, or avoidance of the primary relationship can put the counselor at great risk of harm by the supervisor. Some multiple relationships in supervision cannot be avoided (being promoted to a position of supervising a former peer or friend), but others must be avoided (forming a sexual relationship or allowing supervision to slip into therapy). Competent therapists and supervisors know how to avoid multiple relationships. Astute clinical supervisors also model such behavior and bring discussions of possible multiple relationships into supervisory sessions.



Competence

Besides competency in knowing how to avoid or manage multiple relationships, competence is another ethical principle that pervades both counseling and clinical supervision. The primary issue of competence as an ethical issue is described in Principle III-14 in the NAADAC/ NCC AP Code of Ethics (2016). This principle addresses the ethics of practicing within the boundaries of one's level of competence. This ethical principle also recognizes that competence is established thought education, skill development, experience, and professional credentialing. Perceptive supervisors remain aware of the level of competence of supervisees and ensure that the clinical work of counselors under their supervision match their level of competence. This principle also includes the work of clinical supervisors who must be competent, not only as supervisors, but in the specific areas in which their supervisees are working (Corey, et al., 2015). The latter becomes a problem in addictions treatment when the supervisor (however skilled he or she might be in counseling) lacks a foundation in working with clients who are diagnosed with substance use disorders. Also, it is quite common that those who become supervisors are promoted without previous supervisory experience. Therefore, to stay within ethical guidelines, newly promoted supervisors must develop supervision-specific competence through training and supervision of their supervision (Bernard & Goodyear, 2014). Those who do not seek such means of developing supervisory competence are not only violating an ethical code, but they are doing disservice to those being supervised and ultimately to the clientele their supervisees are working with.

Confidentiality

When we think about ethical obligations, the area that comes to mind for most is confidentiality. This is the area that is frequently identified by clinicians as being ethically problematic (Bernard & Goodyear, 2014). Confidentiality is specifically covered under Principle II in the NAADAC/ NCC AP Code of Ethics (2016). I encourage clinical supervisors to become familiar with the 28 items listed under the NAADAC/ NCC AP Code as well as the Code of Federal Regulations (42 C.F.R. Part 2), the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Note that the latter (HITECH) was passed to widen the scope of privacy and security protection under HIPAA regarding the protection of confidential information that is transmitted via digital technology (Rousmaniere, Abbass, & Frederickson, 2014).

We are entering a new world of technology with regards to the means available to provide clinical work and clinical supervision outside of traditional face-to-face interaction. For instance, technology-based clinical supervision is being introduced as a means of allowing supervisors to engage in key elements of clinical supervision (such as direct observation, skill building, and evaluation) while in a different location than the counselor. This opens up many possibilities of new means of providing clinical supervision; however, it also opens up a broad area of concern around the security and protection of confidential information. For instance, there is an increasing number of platforms available for interactive audio-visual technology (IAVT), but not all are HIPAA or HITECH compliant (Rousmaniere, et al., 2014).

I encourage supervisors to expand their repertoire of methods for delivering clinical supervision, but when doing so, one must ensure that the transmission of the chosen platform is encrypted as a means of avoiding access by others to confidential information. Not all popular means of electronic meeting platforms are encrypted. Moreover, some common videoconferencing platforms can be used for conversations between supervisors and supervisees, but are not appropriate for any transmission of protected information. If videoconferencing is used to share videos of client sessions or the sharing of any confidential information via live supervision, a fully-vetted and encrypted HIPAA and HITECH-compliant platform must be used. Ethical principles such as informed consent, vicarious liability, multiple relationships and confidentiality all come into play when we consider new technologies. This new era of online therapy and the use of electronic transmission in counseling and clinical supervision brings great potential for expanded and efficient services. However, we must be vigilant in following all ethical guidelines.

Conclusion

Counselors are faced with ethical dilemmas daily, but unfortunately some counselors are ill equipped to meet the many demands encountered in addiction counseling. One means of ensuring ethical conduct (for both supervisee *and* supervisor) is to review the NAADAC/ NCC AP Code of Ethics (2016) as a component of clinical supervision. This can be accomplished, for example, by focusing on one principle at a time and applying each one to case studies or actual examples from the supervisee's practice.

Ethical dilemmas occur in the supervisory realm as well. By having a firm grasp of ethical principles, the supervisor effectively serves as a professional role model to supervisees. However, if a supervisor continues to juggle multiple demands and responsibilities and, as a result, is pulled away from providing adequate clinical supervision, there is a risk that the counselor, supervisor, and ultimately the treatment agency can be held liable for negligence. Situations like the two examples at the beginning of this article are not uncommon. They can be avoided or effectively managed when supervisors remain aware of the salient aspects of a supervisee's case load. It is also crucial that counselors and supervisors have a firm grasp of ethical codes and boundaries. Situations like the case studies that appear at the beginning of this article underscore the importance of regularly scheduled and ongoing supervision. As a supervisor, you must count on counselors you supervise to be able to "think ethically." This can be accomplished when supervisors remain consistently aware of a supervisee's work with clients while maintaining, at a minimum, a "reasonable effort to supervise."

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