

Risk Management and Ethical Considerations in Supervision

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Daniel O. Taube earned his JD/PhD from Villanova University and Hahnemann University (1985 and 1987, respectively), as a member of the Joint Psychology and Law Graduate Program. He is Professor Emeritus at the California School of Professional Psychology, Alliant International University, San Francisco, is currently a member of The American Insurance Trust's Risk Management team, and regularly consults across the country with a wide range of practitioners and community agencies regarding standards of practice and ethical concerns. His areas of professional focus include ethical and legal issues in professional practice, child protection and addictions.



Disclosures/Conflicts of Interest

- Dr. Taube is affiliated with The Trust Risk Management. He otherwise has no known conflicts of interest that would affect the content of his presentation.
- NOTE: The information presented in this webinar is not intended to provide legal advice or to substitute for the advice of an attorney, but rather to provide information about considerations when providing primary supervision of interns and post-doctoral fellows.

References/Citations

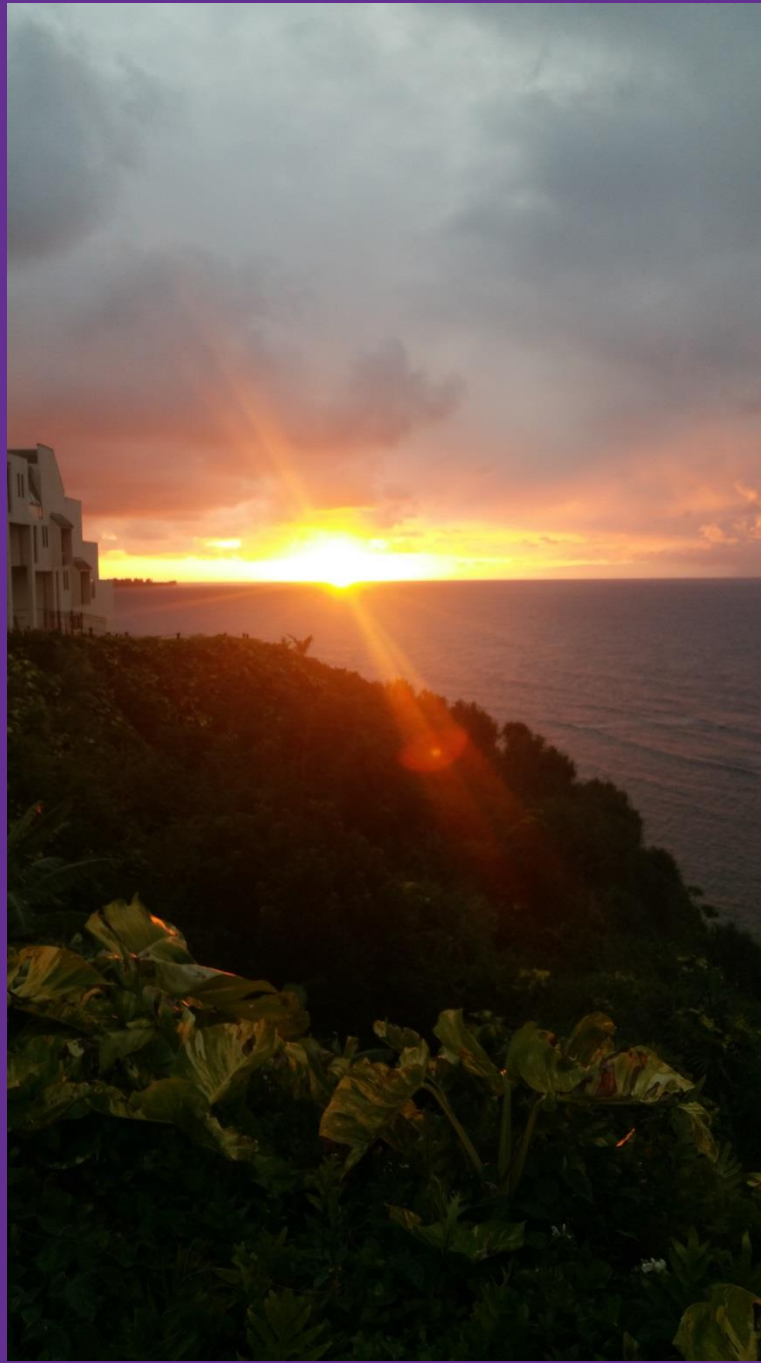
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Learning Objectives

1. Identify three areas of legal and ethical risk in providing clinical supervision to unlicensed interns and postdoctoral fellows;
2. Apply two main methods for minimizing such risks;
3. Demonstrate three essential components in the first level of informed consent between interns/fellows and patients;
4. Describe four components of second level informed consent between supervisors and/or their agencies, and interns/fellows.

Some Prefatory Remarks

- Being a supervisor in the shadow of COVID-19
- Self-care; a critical component
- State specific nature of many questions as to whether and how to complete practicum placements, internships and fellowships



Some Prefatory Remarks

- This complexity is caused by multiple layers of regulation (state licensing law, regional accreditation requirements, APA and training requirements, to name a few)
- Tensions between graduate programs and placements, treatment and training
- General orientation to risk management (RM) in a time of significant uncertainty

Supervisory Dilemma



Dr. Super



Ms. Intern

Supervisory Dilemma

- Clinical Issues
 - Ethical Issues
 - Legal Issues
 - Risk Management Issues
-
- Can I be held responsible for my supervisee's failure to do the things I asked?
 - What are supervisors legally and ethically expected to do?

Ethics Code Provisions

7.06 Assessing Student and Supervisee Performance

a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

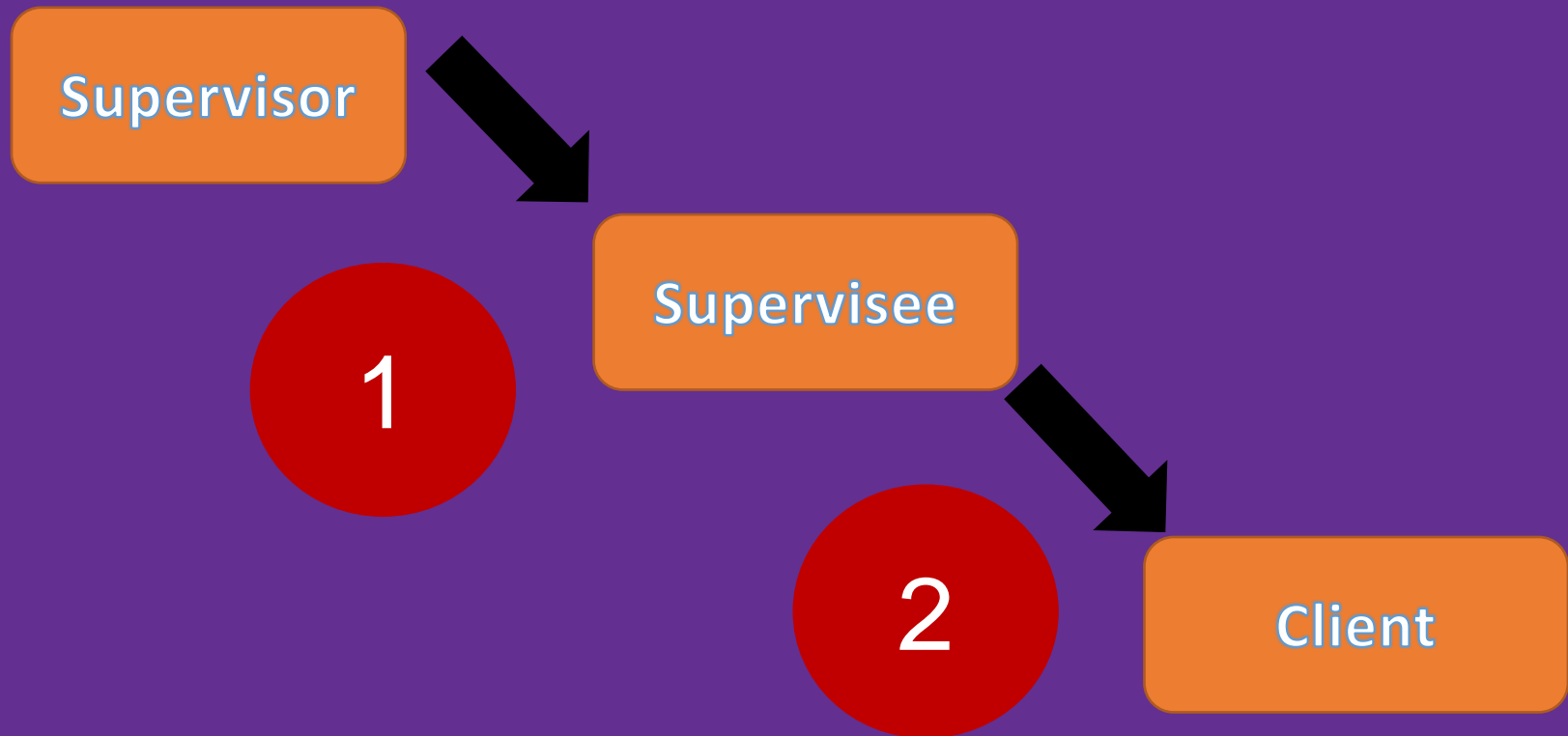
Supervisory Responsibility

- Vicarious liability
 - Supervisors are responsible for all of their supervisees' activities
 - *Respondeat superior* = “let the master answer”
- Direct liability
 - Supervisors can be held responsible under the legal theory of *negligent supervision*
- Supervisees do not have “patients” or “clients” because they are not licensed.

Adapted from Dudder (1994); Recupero et al. (2007)

Risk Management for Supervision

Two-level informed consent process



Informed Consent: Supervisee → Client (2nd level)

- Potential risks of service (Remote? See sample consent form at <https://parma.trustinsurance.com/Resource-Center/Document-Library>)
- Potential benefits
- Alternatives (if any)
- Limits to Confidentiality
 - Especially that info will be shared with supervisor
- Nature and extent of record-keeping
 - Including who will be custodian of records, for how long, etc.
- Clinician's education, training, and experience

Informed Consent: Supervisee → Client (2nd level)

- Fees, costs, billing procedures
 - For example, are services provided by unlicensed supervisees reimbursable?
 - Supervisees typically cannot be paid directly
 - Documentation of how supervisees must bill
- Likely length of treatment
- Rights of clients
 - Including right to discontinue services (and potential risks of doing so)
- Emergency access

Informed Consent: Supervisee → Client (2nd level)

- That supervisee is NOT licensed
- That supervisee is being supervised by a licensed person
 - NOTE: the consent process and form clearly informs the client of the supervision
- Name, license number and type, contact info for the supervisor
- To whom client should direct questions or concerns

Informed Consent:

Supervisor → Supervisee (1st Level)

- The supervisory relationship is a contractual one and must be treated as such
- It is necessary to articulate and clarify a range of issues
- This is not simply about the paperwork
 - For example, hours logs, academic program or state licensing paperwork for supervisors to sign
- A clear, written ***supervision agreement/contract*** is important
 - Beyond the usual licensing board requirements

Informed Consent:

Supervisor → Supervisee (1st Level)

1. Timing

- Should be completed BEFORE supervisee sees any clients

2. Compliance

- Supervisee will follow all applicable ethical standards, laws, and regulations

3. Disciplinary/remediation/termination procedures

- Failure to comply is grounds for discipline, including termination from internship

Informed Consent:

Supervisor → Supervisee (1st Level)

4. Practice conventions and policies
 - For example, use of specific intake forms and procedures, assessment methods, record-keeping practices
5. Client notification
 - Of supervisee's unlicensed status
 - Of supervisor access to client's clinical information
6. Completion of informed consent paperwork with all clients

Informed Consent:

Supervisor → Supervisee (1st Level)

7. Practice only within scope of (supervisor's and supervisee's) competence
 - Only provide services that supervisor and supervisee have agreed upon
8. Financial policies
 - Supervisee usually can't accept direct payment
 - Supervisee usually can't pay for rent or supervision
 - Supervisees should be employees (not independent contractors)

Informed Consent:

Supervisor → Supervisee (1st Level)

9. Supervisee must inform supervisor (or other designated administrator) of any risk or legally-related issues BEFORE taking action
 - Receiving subpoenas or requests for records/information
 - Possible child, elder, or dependent adult abuse reports
 - Concerns about partner violence
 - Possible recovery of memories of abuse
 - Imminent separation/divorce (couple/parents/family)
 - Any situations where client may be danger to self or others, or gravely disabled
 - Use of any experimental or non-traditional methods

Informed Consent:

Supervisor → Supervisee (1st Level)

10. Services must be provided as agreed (e.g., remotely; on site)
 - If home/community visitation is part of job description, then include methods of assuring supervisee safety
11. Supervisee must maintain required weekly log of hours (e.g., clinical, supervision, etc.) for licensing purposes
 - And provide copies and review logs with supervisor
12. Supervisee has documented training in applicable interventions and modalities (e.g., telepsychology, CBT)
13. Supervisee is expected to record sessions, be observed, keep process notes, etc.

Informed Consent: Supervisor → Supervisee (1st Level)

Supervisor is expected to:

14. Complete scheduled supervision sessions and be willing to provide as much supervision as is needed (regardless of compensation or exceeding legal minimums)
15. Review supervisee's notes and records regularly
16. Keep notes on supervision meetings
17. Avoid multiple role relationships with supervisees

Supervisory Dilemma (revisited)

- What could have been done differently?
 - Informed consent process and paperwork
 - DV reporting
 - Use of standard intake protocol

Supervisory Dilemma (revisited)

- A signed consent form that included a clear statement about the Ms. Intern's licensure status and Dr. Super's supervisory responsibilities would have been a blow to any lawsuit or licensing board complaints
- The consent form (and training on its use) would have probably raised the issue with Ms. Intern about a discussion, first, of a report of DV.
- The use by Ms. Intern of the standard intake forms, like the CTS-2, would have at least shown diligence about possible violence, and may have gotten information from this mother at the outset.
- In other words, Dr. Super could have had a much better chance at completely avoiding this scenario—and if she couldn't, a great chance of successfully defending any adverse legal action.

Additional Supervision RM Steps

- **Meet the prospective supervisee BEFORE agreeing to supervise**
- **Schedule and KEEP routine supervision times**
 - Cancellations should be rare
 - Protect the time like you would a client's session
- **Have (and follow) a clear policy regarding the nature and frequency of the supervisory evaluation process**
 - Including how supervisees will be involved
 - Ongoing routine feedback is best (i.e., not just at the end of the internship)
 - There shouldn't be surprises in final evaluations

Risk Management for Supervisees

- What if the supervisor does not keep supervision appointments?
 - Or does not maintain proper boundaries?
 - Or requires that an immune system-compromised supervisee continue to see patients in-person?
 - What are the steps one should take?
- Power differential
 - Supervisees are more vulnerable in this relationship
 - Approaching a supervisor directly can be intimidating

Risk Management for Supervisees

- Slow down! (Or, as Emperor Augustus was said to have ordered, “Festina Lente”—make haste slowly)
- Get consultation from other professionals/colleagues
- Informal, direct approach is ethically appropriate in many situations
- Explain your view
- Refer to the supervisory agreement
- Ask for help from your supervisor

Risk Management for Supervisees

- If informal, direct methods do not work, proceed to more formal methods
 - For example, discuss with the training director
- Professional, solution-oriented approach is likely to be more effective
- Bringing in other professionals or systems should be done after exhausting internal options
 - Or receiving consultation that there is no internal solution

Summary

- Some supervisory risks exist, but they are by no means insurmountable
- Be sure to have well-articulated first and second level agreements/consent processes in place
- Follow through with regular—and reasonably frequent—feedback
- Maintain good boundaries
- If supervisees experience problems, take them seriously



Q&A



- Dr. Sammons will read select questions that were submitted via the Q&A feature throughout the presentation.
- Due to time constraints, we will not be able to address every question asked.