
SUPERVISION OF MEDICAL AND NON-MEDICAL MENTAL HEALTHCARE PROVIDERS

Many psychiatrists and other mental health professionals today work in practice settings where supervision of medical and non-medical mental health care providers is commonplace. One should consider the liability exposure that these arrangements can generate. From a legal perspective, the key issue is "control;" increased control over another provider increases the supervisor's potential liability.

Because of the high degree of control involved in a supervisory relationship, it carries with it responsibilities and risks which are not present in collaborative, consultative, or independent contractor relationships. A supervisor may be named in a lawsuit alleging malpractice against a supervisee. The plaintiff may either try to impute malpractice directly to the supervisor or hold the supervisor liable independently on a theory of negligent supervision. In the end, adequate supervision is necessary to protect the supervisor from liability for the supervisee's actions. Adequate supervision is measured by the continually evolving standard of care for supervision within the health care community generally. The practical pointers below are aimed at helping you identify and reduce the liability exposure which supervisory relationships can generate.

Before entering into a supervisory relationship, review and discuss applicable statutes and regulations with the supervisee.

Comment: *Some states have specific requirements for supervision. For example, statutes may address the supervision requirements for someone seeking professional certification or licensure, the responsibilities of a physician who supervises an advanced practice nurse with prescribing authority, or the details of an imposed supervision for an impaired professional. Contact the relevant licensing/regulating/professional bodies for information and guidance.*

Be aware that there is no universal agreement on what "supervision" means. Know what you are agreeing to.

Comment: *Know what is expected of you before you sign a contract or agreement to be a supervisor and before signing-off on a form as a supervisor. Check with the various organizations that may be involved, such as the client's insurance company or MCO, facilities where you and the supervisee practice, and Medicare/Medicaid, to understand their definition of supervision and supervisor. Required supervision levels should be viewed as the minimum necessary. Depending upon the situation and your level of familiarity with the supervisee, additional supervision may be warranted.*

Consider developing a written agreement, either by contract or some other formal arrangement, prior to supervision.

Comment: *A formal agreement should promote communication by setting parameters, clarifying responsibilities and expectations, establishing procedures, and limiting ambiguity. Some states require a written agreement for certain supervisory relationships and even require a review of the agreement by the respective licensing boards. Any agreement should be strictly*

followed. In a professional malpractice lawsuit, failure to meet the standards that you and the supervisee have agreed to will increase the risk that you will be found to have breached appropriate supervision standards.

Know that a legal document cannot totally eliminate your liability risks that arise from a supervisory relationship.

Comment: Should the supervisory relationship ever be questioned, the substance of the relationship will be considered as well as any formal agreement.

Educate the patient about the supervisory relationship. This should include obtaining consent from the patient for the supervisee to discuss confidential information with you.

Comment: At a minimum, the patient should know your name, credentials, and role.

Do not supervise relatives, close friends, or employers.

Comment: Dual relationships can impair your objectivity and professional judgment and should be avoided.

Do not provide supervision to someone practicing outside of your scope of practice.

Comment: You will be held to the standard of care for that practice area.

Verify the supervisee's education, training, licensing, credentialing, and professional liability insurance coverage. Also, contact the relevant licensing body to inquire about administrative complaints or actions. Make certain that you document these efforts including with whom you spoke and when.

Comment: The supervisee should have the same insurance limits that you have. The supervisee should notify you immediately of any investigations or disciplinary actions, loss or limitation to licensure, or insurance coverage changes.

Tailor your involvement to the supervisee's education, training, and skills, as well as the clinical needs of the patient.

Comment: Do not make assumptions about the supervisee's knowledge; assess his skills carefully. Document internal training and continuing medical education, as well as other educational efforts provided to the supervisee.

Ensure on-going communication between yourself and the supervisee.

Comment: This is especially critical with regard to emergent situations. If at anytime there are material changes in the patient's status, including, but not limited to, suicidality and/or homicidality, the supervisee should notify you ASAP.

Ensure that the supervisee is aware of the appropriate professional code of ethics.

Ensure that a supervisee who will be prescribing medications on his own has complied with statutory, regulatory, and payor requirements and has obtained his own DEA number and prescription pads.

Remember that you are responsible for ensuring that the supervisee performs responsibly, competently, and ethically. Evaluate the supervisee on the basis of actual performance and reasonable standards. If at any time and for any reason, you determine

that the supervisee is not providing services commensurate with the standard of care, develop and implement a written plan for remediation.

Comment: Ensure that the patient is being provided with appropriate care by you or another competent health care professional until the supervisee is able to assume the responsibility for care.

Document your supervision.

Comment: Your documentation should meet the requirements specific to your supervisory role and may include the dates of each supervisory meeting, the duration of in-person supervisions, and an ongoing record of the total number of hours of supervision to date.

Check your professional liability insurance policy and/or contact your underwriter for policy provisions specific to supervisory roles.

Consult with personal legal counsel for state specific legal advice and for information about financial and billing matters related to your supervisory role.

The APA's "Guidelines for Psychiatrist in Consultative, Supervisory or Collaborative Relationships with Non-medical Clinicians" provides some additional guidance on this topic.

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