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afternoon handout 2

CAMFT's 2018 fall symposium

FRIDAY, NOVEMBER 9, 2018
9:00 a.m. - 5:00 p.m. (6 CE hours)

“Legal & Ethical Issues
in Supervision: Current
Standards and
Prospective Changes”

Presented by CAMFT Staff Attorneys
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Good v. Bad Supervision

A look at two supervision cases

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Good Supervision

- Good supervision is ethical and legal and contributes to the well-being of the patient and the successful maturation of a trainee or registered associates as a therapist
- We have discussed good supervision all day!

Bad Supervision

- Bad supervision is unethical and maybe illegal, can harm patients, and can lead to the disciplining of a supervisor by the BBS for committing unprofessional conduct



The Administrative Law Process

- In the cases the patients felt aggrieved, and they turned to the BBS for redress of their grievances
- They started by filing complaints with the BBS.
- Once a complaint has been filed, the BBS must then determine whether the complaint merits investigation by the Department of Investigations.



Cont.

- If the BBS does refer the complaint to the Department of Investigations, the department will investigate the complaint and submit a report of the investigation to the BBS.
- After reviewing the report, the BBS will then decide whether to commence disciplinary proceedings by filing an accusation of unprofessional conduct against the person named in the complaint



Cont.

- At this juncture the supervisor could have resolved these accusations by entering into a Stipulated Settlement with the BBS, which would have required the supervisor to agree to mandated discipline.
- However, in these cases the supervisor wanted to have his or her "day in court" so the supervisor elected to have the complaints heard by an ALJ in an administrative law hearing.





Administrative Law Hearing

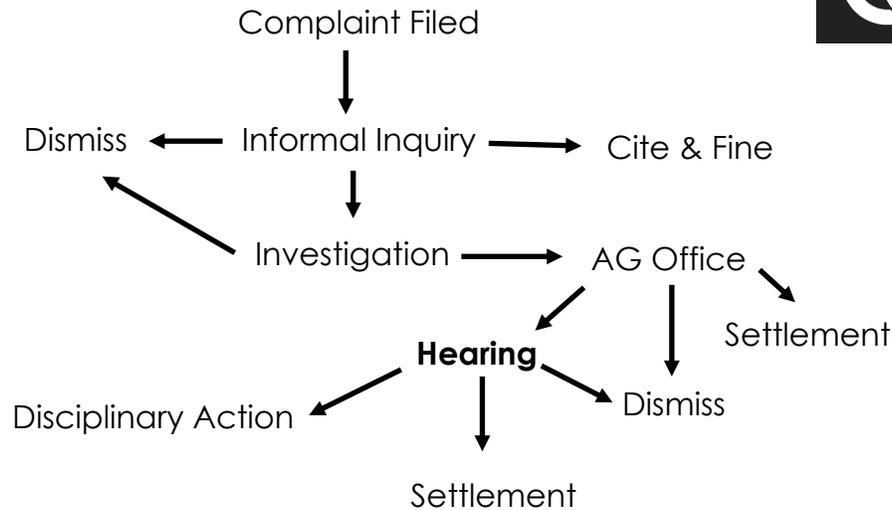
- An administrative law hearing is like a trial, although the more formal rules of evidence and civil procedure are relaxed.
- At the hearing the BBS prosecutes the case against the person named in the accusation.
- The BBS must prove by clear and convincing evidence to a reasonable certainty that the person accused of committing unprofessional conduct has actually done the things that constitute unprofessional conduct.



Cont.

- If the evidence is clear and convincing to a reasonable certainty that the person has committed unprofessional conduct, the ALJ will decide the case *against* that person.
- However, if the evidence is not clear and convincing to a reasonable certainty that the person has committed unprofessional conduct, the ALJ will decide the case in *favor* of that person.

B.B.S. Disciplinary Actions



Cases



- In the cases that follow, the supervisor was accused of committing unprofessional conduct in the course of supervision.
- The charge of unprofessional conduct means that the supervisor has committed acts of **gross negligence** during the supervision, or that the supervisor has **recklessly caused harm** to the patient by **supervising improperly**.
- gross negligence--an extreme departure from what a reasonably competent supervisor is supposed to do under similar circumstances.



Case #1

- Supervisor hired "Randy" as a registered associate and Randy was assigned "Mary" as a patient.
- Randy and Mary's professional relationship became personal.
- Randy saw Mary four to five times a week, although the record is not clear about whether these were personal or professional interactions; he also saw members of her family (personal and professional)
- Randy and Mary engaged in a sexual relationship
- Randy billed for therapy sessions that never occurred



What was the Supervisor doing??

- Not much of anything.
- The supervisor did meet with Randy on a weekly basis to review the progress of his patients, but the quality of the supervision was poor.
- The supervisor's style consisted of simply listening to case reports from supervisees.
- The supervisor never reviewed Mary's clinical file
- Was not sure whether Randy even kept a client file for Mary.
- The supervisor never had Randy audiotape or videotape a session as a way of assessing Randy's clinical skills.
- Supervisor had trouble recalling that Mary was ever discussed much during supervision.



Bad Supervision

- ALJ concluded that the supervisor had been grossly negligent, and hence violated the standard of care when supervising Randy by:
 1. Failing to exercise "vigilant watchfulness" over Randy. Why? Because a supervisor must do more than teach; the supervisor's responsibility is to oversee, to monitor, and to actively help a supervisee
 2. Supervisor also failed to realize that the associate was billing for counseling sessions that never occurred
 3. Supervisor was also unaware that Randy was counseling members of Mary's family. Think about possible dual relationship considerations? Conflicts of interest? Therapist/patient loyalty issues?



Bad Supervision

4. Failing to do more than simply listening to Randy give case reports of his work with Mary. Think about direct observation, review of audio or video tapes of therapy, review of progress and process notes and other treatment records
5. Blindly accepting Randy's reports about what was occurring during sessions. Part of being a good supervisor is inquiring about the clinical perceptions of supervisees and the methods supervisees are using in their sessions with clients.



Case #2

- Supervisor hired "Rodney" as an associate. He was very knowledgeable and confident. He was an impressive individual, and he gave others the feeling that he knew what he was doing.
- Supervisor assigned "Jill" to Rodney as a patient. Jill had Borderline Personality Disorder and was a very challenging patient.
- Rodney had experience working with Borderline's and he was keenly interested in working with this population
- When difficult issues concerning Jill's treatment arose, Rodney was very persuasive in demonstrating that he had control of a challenging patient.



What was the Supervisor doing??

- Supervisor met with Rodney each week for a minimum of one-hour, and they discussed problems that Rodney had encountered in the previous week's session and they discussed approaches to be used in the upcoming week's session.
- Rodney kept chart notes, and his supervisor reviewed such notes.
- Rodney and Jill began taping their sessions. Rodney did not inform his supervisor that he was taping these sessions
- The tapes exhibited therapy that had become highly sexualized, although Rodney and Jill never had sexual intercourse.
- The tapes also evidenced that in the battle between Rodney and Jill for control of the sessions, Jill "won" and her "victory" caused her serious harm.



Jill filed Complaint

- Jill alleged that the supervisor was grossly negligent in assigning her case to Rodney because Rodney was unqualified and unfit to counsel her, presumably because she was a borderline patient and he was just an associate.



Good Supervision

- ALJ stated that it was not below the standard of care for the supervisor to assign the case to Rodney
- He did have experience with borderlines
- The supervisor's rationale for the decision documented thoroughly in the patient file
- ALJ decided the supervisor did all of the right things.
- Met with him on a weekly basis; reviewed the case file; discussed concepts, problems, and approaches to be used in Rodney's sessions with Jill



Good Supervision

- Supervisor seemed to exercise "vigilant watchfulness" over Jill's case
- Supervisor ensured that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the associate
- Interestingly enough though, in case two, despite the fact that Jill was harmed by the associate's actions, the ALJ concluded that there was not clear and convincing evidence to a reasonable certainty that the supervisor had been grossly negligent or reckless in his supervision of Rodney.



Things to remember

1. Exercises "vigilant watchfulness" over the cases that are assigned to the supervisor's trainees and associates;
2. Be aware of who is being billed for the services that trainees and associates provide and how often the clients are coming in for treatment;
3. BE aware of who trainees and associates take on as clients and considers the potential for dual relationship and conflict of interest issues;
4. Uses the tools available for supervising trainees and associates, including occasional audio or video-taping;
5. Is clinically skeptical about the trainee's or associate's work with clients and demonstrates such skepticism by inquiring about the clinical perceptions of supervisees and the methods of treatment used by supervisees in their sessions with clients.

Don't panic!

- If a patient files a complaint against you for committing unprofessional conduct, whether for improperly supervising or otherwise, do not panic
- You will WIN because you acted as a reasonably competent supervisor because of today's training and not as a grossly negligent one.



Q&A



More questions about this topic?
Legal and/or ethical questions?
Camft.org
Contact CAMFT's Legal Department
Toll-free number: (888) 892-2638