

Ethical Issues in Clinical Supervision

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Speaker Disclosure

- Melanie is receiving travel funding for this presentation
- Melanie is an employee of EBS Healthcare receiving a salary
- Melanie receives royalties from her textbook "Professional Issues in Speech-Language Pathology and Audiology," (Lubinski, Hudson, 2013, Delmar-Cengage; Plural, 2018)

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Learner Outcomes

- As a result of this presentation, participants will increase awareness of ethical practices pertaining to clinical supervision.
- As a result of this presentation, participants will be able to discuss recurring themes in ethical issues pertaining to clinical supervision.
- As a result of this presentation, participants will be able to identify supportive resources when facing ethical dilemmas.

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Supervisory Relationship/Setting Expectations



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Goals of Clinical Supervisor

Ensure protection and welfare of the client



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Goals of Clinical Supervisor

Provide for professional growth and development of the supervisee



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Goals of Clinical Supervisor

Ensure that supervisee is practicing within professional guidelines



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Scope of Practice in SLP

- <http://www.asha.org/policy/SP2016-00343/>



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Scope of Practice in Audiology

- <https://www.asha.org/policy/sp2018-00353/>



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Goals of Clinical Supervisor

Teach supervisee to become a competent and independent clinician



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Ethical Issues and Regulatory Responsibility



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Why Have a Professional Code of Ethics?

- Improve self-worth and satisfaction in profession
- Credibility lies in technical competence and public trust
- Ethics is good business



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Why Have a Professional Code of Ethics?

- Professional guidance (backbone)
- Provide consensus
- Give support to responsible professionals
- Official statement to promote public good
- Promote public trust



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ASHA Code of Ethics

ASHA's Code of Ethics contains the rules or standards agreed upon by our membership that govern our conduct and activities. A code of ethics is a shared statement of the values specific to a particular group. The importance of adherence to the Code by ASHA members lies in the preservation of the highest standards of integrity and ethical principles, and it is vital to the responsible discharge of obligations by members of our profession working in all settings.

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Is Adherence Optional?

The Code of Ethics is not simply inspirational in nature; it is essential to ensuring the welfare of those served and protecting the integrity and reputation of the professions. As a consequence, ASHA members and certificate holders are required to abide by the code's principles and rules, and the Association enforces that mandate by sanctioning those found in violation. Depending on the egregiousness of the misconduct, the sanctions that the Board of Ethics can impose range from a confidential reprimand for lesser violations to revocation of ASHA membership and certification for a period of years, up to life, for violations of a serious nature

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ASHA Code of Ethics

- Applies to all ASHA members, certified or not
- Applicants for membership or certification
- CF seeking to fulfill standards for certification
- Suggests minimally acceptable conduct
- Organized into a preamble and four principles of ethics which are further defined by rules of ethics
- May assist members in self-guided ethical decision making

<https://www.asha.org/Code-of-Ethics/>

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ASHA Code of Ethics

- Fundamentals of ethical conduct described by Principles of Ethics and Rules of Ethics
- Four Principles form underlying basis
- Rules are specific statements of minimally acceptable as well as unacceptable professional conduct



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Four Principles of COE

- **Principle I:** Responsibility to persons served professionally and to research participants, both human and animal
- **Principle II:** Responsibility for one's professional competence
- **Principle III:** Responsibility to the Public
- **Principle IV:** Responsibility for professional relationships

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States' Codes of Ethics

- Codes of ethics or professional conduct are principles designed to help professionals conduct business honestly and with integrity. They are generally aspirational in nature.
 - If a state does not reference a specific code, know what constitutes grounds for discipline.
 - Please be advised that statutes and regulations may change at any time, so check periodically for updates.
- <https://www.pabulletin.com/secure/data/vol47/47-28/1160.html>

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Common Ethical Complaints

- Documentation Lapses
- Employer Demands
- Use and Supervision of Support Personnel
- Clinical Fellowship Mentoring/Student Supervision
- Client Abandonment
- Reimbursement for Services
- Business Competition
- Impaired Practitioners
- Affirmative Disclosures



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Vicarious Liability

- The supervisor is ultimately responsible, both legally and ethically for the actions of the supervisee.



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Documentation Lapses



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Ethical Concerns

- False Claims Act: knowingly submitting false claims for rehabilitation therapy services that were unreasonable, unnecessary and unskilled.
- Supervisor requests that they "sign off" on documentation for patients they did not evaluate or treat;
- Supervisor may request altering or supplementing patient or treatment paperwork (5.9% in recent survey);
- Supervisor may automatically place patients in highest therapy reimbursement level, rather than using individual evaluations to determine appropriate level of care;
- Pressure therapists and patients to complete the planned minutes of therapy even when patients were sick or declined to participate.

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ASHA Code of Ethics

- **Principle of Ethics I;** Rule Q: Individuals shall maintain timely records and accurately record and bill for services provided and products dispensed and *shall not misrepresent services provided*, products dispensed, or research and scholarly activities conducted.
- **Principle of Ethics III;** Rule D: Individuals shall not defraud through intent, ignorance, or negligence or engage in *any scheme to defraud in connection with obtaining payment*, reimbursement, or grants and contracts for services provided, research conducted, or products dispensed.
- **Principle of Ethics IV;** Rule E: Individuals shall not engage in dishonesty, negligence, fraud, deceit, or misrepresentation.

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Employer Demands



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Ethical Concerns

- Supervisors may demand increase in caseloads, tighter time limits, higher production quotas, and rejection of a professional's independent judgment;
- Supervisors may pressure to provide services for which service provider had inadequate training/experience (7.4% in recent survey)
- Supervisors may assign duties that are outside of the scope of practice.
- Other?

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ASHA Code of Ethics

- **Principle of Ethics II, Rule A:** Individuals who hold the Certificate of Clinical Competence shall engage in only those aspects of the professions that are within the scope of their professional practice and competence, considering their certification status, education, training, and experience.

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Use and Supervision of Support Personnel



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Ethics and Supervision of Assistants

- Because of differing state requirements and various job titles, the Ethics Office receives numerous ethical inquiries about roles and responsibilities of support personnel.
- The Board of Ethics does not have jurisdiction over an assistant practicing alone. The board's jurisdiction is limited to a member, certified member, or applicant (ASHA, 2008).
- In general, however, there is no ethical use of assistants in any setting without adequate direction and supervision by an ASHA certified professional (ASHA, 2004)
- While ASHA endorses the use of trained and supervised support personnel, ASHA does not require the use of support personnel. SLPs should not be expected to use support personnel, particularly if they feel that quality of service may be compromised. ASHA expects SLPs to use support personnel in accordance with the ASHA Code of Ethics, and may impose sanctions on SLPs if assistants are used inappropriately

<http://www.asha.org/policy/SP2013-00337/#sec1.10>

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Affiliation with ASHA

- ASHA has established an Associates Affiliation program for support personnel in speech-language pathology and audiology, open to individuals who:
 - are currently employed in support positions providing audiology or speech-language pathology assistant services and
 - work under the supervision of an ASHA-certified audiologist (CCC-A) or speech-language pathologist (CCC-SLP).
 - Applicants are required to obtain the signature of their ASHA-certified supervisor(s) in order to become ASHA Associates.
- <https://www.asha.org/Practice-Portal/Professional-Issues/Audiology-Assistants/>
- <https://www.asha.org/Practice-Portal/Professional-Issues/Speech-Language-Pathology-Assistants/>

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SLP Assistants

- Appropriate training and supervision of SLPAs is to be provided by SLPs who hold ASHA's Certificate of Clinical Competence (CCC) in Speech-Language Pathology.
- An SLP should not supervise or be listed as a supervisor for more than two full-time (FTE) SLPAs in any setting or combination thereof.
- Activities may be assigned only at the discretion of the supervising SLP and should be constrained by the Scope of Practice for SLPAs.
- The best interest and protection of the consumer should be paramount at all times.
- The purpose of the SLPA should not be to increase or reduce the caseload size for SLPs, but rather to assist SLPs in managing their existing caseloads. SLPAs should not have full responsibilities for a caseload or function autonomously. (ASHA, 2013)

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ASHA Code of Ethics

- **Principle of Ethics II; Rule E:** Individuals in administrative or supervisory roles shall not require or permit their professional staff to provide services or conduct research activities that exceed the staff member's certification status, competence, education, training, and experience.



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Client Abandonment



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ASHA Code of Ethics

- **Principle of Ethics I;** Rule T. Individuals shall provide reasonable notice and information about alternatives for obtaining care in the event that they can no longer provide professional services.

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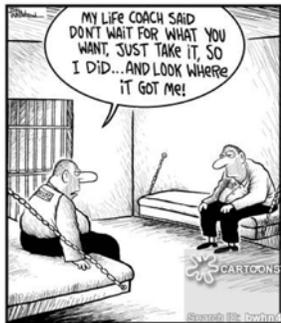
Client Abandonment

ASHA members must, at all times, maintain their focus on the welfare of the client, even when, as clinicians, they decide to end their relationships with employers or patients. Given the current shortage of CSD professionals, however, departures may leave clients without appropriate care. Adequate notice is necessary to prevent treatment disruptions, but even when given adequate notice, employers may be tempted to pressure or threaten departing clinicians to stay or give unreasonable amounts of notice. The Board of Ethics "Issues in Ethics" statement on client abandonment (ASHA, 2010b) offers specific guidance to remain ethical while in transition. Prior to departing, a professional must make effective efforts to provide for the patient's continuing care. The more seamless the transition for the patient, the better.

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Reimbursement for Services



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Reimbursement for Services

- Ethical issues typically related to intent, fraud, and misrepresentation.



<http://www.asha.org/Practice/ethics/Representation-of-Services/>

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Ethical Issues

- Misrepresenting information to obtain reimbursement or funding, regardless of the motivation of the provider.
- Providing service when there is no reasonable expectation of significant communication or swallowing benefit for the person served.
- Scheduling services more frequently or for longer than is reasonably necessary.
- Requiring staff to provide more hours of care than can be justified.
- Providing professional courtesies or complimentary care for referrals or otherwise discounting care not based on documented need.

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Business Competition

BSB153-TS



"Off to start your own company in the same business as ours ... no, we don't mind at all."

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Business Competition

- Services must be designed to serve the public by providing accurate information in all aspects” of the professions, from advertising to prognosis.



<http://www.asha.org/Practice/ethics/Competition-in-Professional-Practice/>

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Impaired Practitioners



"These drug tests, they're absolutely confidential right? I don't want any rumors spread about me."

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Impaired Practitioners

- Recognizing and dealing with impaired practitioners, professionals, and assistants is ugly but important. Impairments range from untreated or undiagnosed mental health issues to substance abuse of all types. The issues may be as much legal as they are ethical. National mental health statistics and surveys of ASHA members indicate that there may be a number of professionals who are challenged by mental illness, substance abuse, or both. Impaired professionals pose a liability to clients and colleagues that increases with time and opportunity, so addressing their impairment is imperative.
- Because the circumstances surrounding an impaired professional are complex, this type of ethical dilemma should not be taken on by one person. The supervisor, director, owner, lawyer, employee assistance program counselor, ethics officer, and/or compliance officer should be consulted to draw up a plan that encompasses all needed aspects to manage both the impaired professional as well as his or her caseload and/or students.

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ASHA Code of Ethics

- **Principle of Ethics IV**; Rule I. Individuals shall not knowingly allow anyone under their supervision to engage in any practice that violates the Code of Ethics.



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ASHA Code of Ethics

- **Principle of Ethics I**; Rule S. Individuals who have knowledge that a colleague is unable to provide professional services with reasonable skill and safety shall report this information to the appropriate authority, internally if a mechanism exists and, otherwise, externally.



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Self-Disclosure

- University programs and licensure boards increasingly require applicants to reveal past criminal or professional discipline history, and applicants for ASHA certification, reinstatement, and recertification must do the same. This requirement generates many inquiries from applicants regarding what or how much to reveal.

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Self-Disclosure

- Most licensure boards share professional discipline records of reciprocal members or applicants with the Ethics Office. Some state licensure boards also require licensees who are disciplined by a state board to self-report this professional discipline to ASHA's Ethics Office within a month of receiving it. This requirement has led to several Board of Ethics-initiated ethics complaints against ASHA members. For instance, if a member's license was revoked by the state licensing board as a result of the member being convicted of a felony by a court, the Board of Ethics would likely initiate a complaint against that member and possibly sanction the member with revocation of ASHA certification and membership for many years.



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ASHA Code of Ethics

- **Principle of Ethics IV**; Rule S. Individuals who have been convicted; been found guilty; or entered a plea of guilty or nolo contendere to (1) any misdemeanor involving dishonesty, physical harm—or the threat of physical harm—to the person or property of another, or (2) any felony, shall self-report by notifying ASHA Standards and Ethics (see Terminology for mailing address) in writing within 30 days of the conviction, plea, or finding of guilt. Individuals shall also provide a certified copy of the conviction, plea, nolo contendere record, or docket entry to ASHA Standards and Ethics within 30 days of self-reporting.

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Medicare

- Clinical educators must comply with Medicare guidelines related to coverage of student and clinical fellowship services. ASHA has compiled information about these regulations in the following sources:
- https://www.asha.org/practice/reimbursement/medicare/student_participation/
- https://www.asha.org/practice/reimbursement/medicare/student_participation_slp/

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Medicaid

- Audiology and speech-language pathology are recognized as covered services under the Medicaid program. The federal government establishes broad guidelines, and each state then administers its own program. Review and approval is conducted by the federal Centers for Medicare & Medicaid Services (CMS).
- Medicaid coverage of services provided "under the direction of" a qualified professional varies by state.
- <https://www.asha.org/practice/reimbursement/medicaid/>

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HIPAA and FERPA

- <https://www.hhs.gov/hipaa/index.html>
- <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Facilities may provide training
- Supervisors ensure that students and CFs are aware of policies and procedures

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Supervision of Students and Clinical Fellows



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Ethics and Supervision of Students

- ASHA-certified individuals who supervise students should possess or seek training in supervisory practice and provide supervision only in practice areas for which they possess the appropriate knowledge and skills.
- The supervisor must oversee the clinical activities and make or approve all clinical decisions to ensure that the welfare of the client is protected.
- The supervisor should inform the client or the client's family about the supervisory relationship and the qualifications of the student supervisee.

<http://www.asha.org/Practice/ethics/Supervision-of-Student-Clinicians/>

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Student Privacy

- The education records of student clinicians are also protected under FERPA; the student clinician has the right to access his or her own education records, seek to have those records amended, control the disclosure of personally identifiable information from the records, and file a complaint with the school or department if he or she feels that these rights have been violated.

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Student Privacy

- Universities generally may not disclose personal identifiable information from the student clinician's educational records without the student's written consent. One exception is when the information is of legitimate educational interest. A clinical practicum site might be allowed access to a student clinician's personal identifiable information and must protect the confidentiality of this information, along with any other educational records generated during the practicum experience (e.g., performance evaluations and grades).

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Students With Disabilities

- The rights of students with disabilities are protected by the Americans With Disabilities Act (ADA; 1990) and Section 504 of the Rehabilitation Act of 1973. The ADA and Section 504 of the Rehabilitation Act of 1973 define **individuals with disabilities** as
- persons with a physical or mental impairment that substantially limits one or more major life activities including caring for oneself, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning.
- persons who have a history or record of such an impairment; or
- persons who are perceived by others as having such an impairment.



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Bi-Lingual Student Clinicians

- When the clinical educator does not also share the language, a unique set of knowledge and skills is needed to understand, monitor, and evaluate the work of the bilingual student clinician:
 - Shared cultural/linguistic relationship between student and client is not an attempt to be exclusionary
 - Bilingual student clinician is not automatically qualified to serve as a bilingual service provider. Adequate linguistic skills and appropriate training required to provide services to the individual with LEP.
 - Roles of bilingual service provider, interpreter, transliterator, and translator are unique, each serving a different function, requiring a different set of knowledge and skills.

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Non-Standard American Dialect or Accented Speech

- **Students can effectively provide services as long as they have:**
 - the expected level of knowledge in normal and disordered communication;
 - the expected level of diagnostic and clinical case management skills, and when necessary; and
 - the ability to model the target (e.g., phoneme, grammatical feature, or other aspect of speech and language) that characterizes the particular problem of the client/patient (ASHA, 1998)—modeling can be provided in a variety of ways, given current technology (e.g., computer applications, software, audio and video recordings)
 - American Speech-Language-Hearing Association. (2011). *The clinical education of students with accents* [Professional Issues Statement]. Available from <http://www.asha.org/policy/PI2011-00324/>

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Mentoring Clinical Fellows

The main purpose of the Clinical Fellowship is to improve the clinical effectiveness of the clinical fellow. The mentoring SLP must provide performance feedback to the clinical fellow throughout the CF. Feedback and goal-setting require two-way communication whereby both the mentoring SLP and the clinical fellow share important information about the clinical fellow's performance of clinical activities. A specific time should be set aside for each performance feedback session at the end of each of the three segments of the CF. This session should be used to identify performance strengths and weaknesses and, through discussion and goal-setting, to assist the clinical fellow in developing the required skills.

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Mentor Qualifications (2019)

- Holds a current CCC-SLP
- ASHA certification is maintained throughout the entire CF experience
- Not related in any manner to the clinical fellow



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2020 Standards

- Clinical supervisors will have to have a minimum of nine (9) months of practice experience post-certification before serving as a supervisor;
- Two hours of professional development in the area of supervision post-certification before serving as a clinical supervisor or CF mentor.



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Mentoring Clinical Fellows

- **Possible Ethical Issues:**
 - assignment of excessive nonclinical duties to the detriment of the Clinical Fellows' clinical experience
 - recruitment of Clinical Fellows to function as independent practitioners without appropriate supervision
 - failure to report a Clinical Fellow's noncompliance with the Code or applicable law
 - failure to fulfill the responsibilities of CF mentoring/supervision as agreed
 - acceptance of compensation for the CF mentorship or supervision from the Clinical Fellow being mentored or supervised, except reasonable reimbursement for direct expenses, which does not include paying the mentor/supervisor's ASHA certification dues/fees or certification application dues/fees
 - delegation of tasks for which the Clinical Fellow is inadequately prepared

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Mentoring Clinical Fellows

- **Possible Ethical Issues:**
 - arbitrary termination of the CF mentor-supervisory relationship
 - termination of the CF mentor-supervisory relationship such that client abandonment occurs
 - failure to establish outcomes and performance levels or failure to do so in a timely fashion
 - failure to complete and sign the CF report or failure to do so in a timely fashion
 - withholding paperwork for the benefit of the employer and to the detriment of the Clinical Fellow
 - failure to provide the required amount of supervision
 - mentoring/supervisory responsibility for an excessive number of Clinical Fellows

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Mentoring Clinical Fellows

- <http://www.asha.org/Practice/ethics/Responsibilities-of-Individuals-Who-Mentor-Clinical-Fellows-in-Speech-Language-Pathology/>
- <http://www.asha.org/certification/CFSupervisors/>
- <http://www.asha.org/advocacy/state/>

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Tele-supervision

The use of tele-supervision as an alternative to in-person supervision may depend on the policies, regulations, and/or laws of various stakeholders such as universities, clinical settings, ASHA, state licensure boards, and state and federal laws and regulations.



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Dual Relationships

- **Principle IV, Rule H:** Individuals shall not engage in sexual activities with individuals (other than a spouse or other individual with whom a prior consensual relationship exists) over whom they exercise professional authority or power, including persons receiving services, assistants, students, or research participants

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Social Media and Ethical Concerns

- Breaching Confidentiality
- Misrepresentation in promotion of services and products; listing of credentials
- Defamation

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Appropriate Steps

- Make appropriate correction or deletion on your own account;
- If a colleague, discuss and encourage them to do the same;
- If you don't know, try to identify third party to fulfill intermediary role.

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Facing Ethical Dilemmas

- Individuals with evidence that that the Code of Ethics may have been violated have the responsibility to work collaboratively to resolve the situation where possible or inform the Board of Ethics through its established procedures.
- Individuals shall not file or encourage others to file complaints that disregard or ignore the facts that would disprove the allegation, nor should the Code of Ethics be used for personal reprisal, as a means of addressing personal animosity, or as a vehicle for retaliation
- Individuals making and responding to complaints shall comply fully with the policies of the Board of Ethics in its consideration, adjudication, and resolution of complaints of alleged violations of the Code of Ethics

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Filing a Complaint with the BOE

- The Board only has jurisdiction to receive, deliberate, and act upon complaints filed against ASHA members or individuals who hold the Certificate of Clinical Competence (CCC);
- The person filing the complaint (the "Complainant") does not have to be an ASHA member;
- The Board does not accept anonymous complaints or complaints filed against an organization or employer;
- The Board accepts complaints filed via mail only and will not accept complaints filed via telephone, e-mail or facsimile; and
- A copy of the complaint form, a written statement of complaint, and all supporting documentation will be provided to the individual against whom the complaint is filed (the "Respondent").
- <https://www.asha.org/Practice/ethics/Filing-a-Complaint-of-Alleged-Violation/>

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The Ethical Supervisor

- Holds paramount the welfare of those served professionally (clients, research subjects, animals)
- Seeks advanced knowledge in the practice of effective supervision
- Delegates tasks appropriately
- Establishes supervisory relationships that are collegial in nature
- Practices non-discrimination
- Is aware of situations creating a dual relationship
- Promotes supervisee's ethical knowledge and behavior
- Differentiates between theoretical differences and ethical dilemmas: discusses and practice solving potential ethical dilemmas
- Is available to the supervisee
- Maintains accurate and thorough documentation

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Ethical Dilemma #1

Supervisor has not had conversation with supervisee as to the “game plan” for the supervisory relationship. Supervisee has no idea as to performance expectations and has been told “we’ll get to that later when I see that you’re doing something wrong.”

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Ethical Dilemma #2

Student clinician self-reports that he speaks Spanish. Supervisor, who does not speak Spanish, goes ahead and automatically assigns all upcoming evaluations requiring Spanish-speaker to the student.

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Ethical Dilemma #3

CF Mentor waits until the end of the final segment to provide feedback that now results in unanticipated delay of the completion of the CF. Although the targeted areas of concern were present from the beginning of the CF Experience, the Mentor did not mention them until all other requirements for CF completion had been met.

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Ethical Dilemma #4

CF in school district has many students out of school on day of FTE count. Principal tells her to take some “other students” from various classrooms to serve as “stand-ins” for the absent students.

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