NO KNOWN CURE?

The Danger and Destructiveness of the Language of Disease

A Position Paper of
Advocates for Change

November 2009

Revised Edition

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I. THE PRINCIPLE

The first of the "Guiding Principles" set forth in the Standards and Guidelines for the Colorado Sex Offender Management Board (SOMB) reads, in pertinent part, as follows:

> 1. Sexual offending is a behavioral disorder which cannot be "cured."
>
> […]
>
> Many offenders can learn through treatment to manage their sexual offending behaviors and decrease their risk of re-offense. Such behavioral management should not, however, be considered a "cure," and successful treatment cannot permanently eliminate the risk that sex offenders may repeat their offenses.[1]

This principle is also encoded in Colorado statutes, which require the SOMB to conduct its duties "based upon the knowledge that sex offenders are extremely habituated and that there is no known cure for the propensity to commit sex abuse. The board shall develop and implement measures of success based upon a no-cure policy for intervention."[2]

Clearly this "no-cure policy" forms the foundation for the SOMB's approach to all of its statutory duties. The question addressed herein is whether this language has any place in Colorado's sex offender laws or the guiding principles of the regulatory agency tasked with managing sex offenders and their treatment programs. It is not simply a question of whether this terminology is appropriate or helpful, but of whether it is not in fact counterproductive and ultimately damaging to the effectiveness of the SOMB in performing its legislative mandate.

The article of the Colorado statutes which created the SOMB contains a legislative declaration, which indicates that the SOMB and the systems it administers were intended by the general assembly to "work toward the elimination of recidivism by [sex] offenders."[3] While the legislature clearly recognized that "**some** sex offenders cannot or will not respond to treatment,"[4] we must consider whether the SOMB's blanket application of the "no cure" philosophy to all sex offenders is compatible with the general assembly's stated purposes.

II. THE TERM

Webster's dictionary contains a number of different definitions of the term "cure", both as a verb and a noun. Several of these are relevant in the context of the "no cure" philosophy, and illustrate the fallacies that this terminology embodies and communicates about sex offenders.

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[1] Colorado Sex Offender Management Board, "Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitoring of Adult Sex Offenders", (March 2008), p. 5.
[2] §16-11.7-103(4)(a) C.R.S.
[3] §16-11.7-101 C.R.S.
[4] *Id.*

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Cure (n) – 2 a: recovery or relief from a disease; b: something (as a drug or treatment) that cures a disease.

Cure (v) – 1 a: to restore to health, soundness, or normality. [5]

The primary message that the "no cure" language communicates is that sex offenders have a disease. The concept of an incurable disease implies a physiological condition which cannot be corrected, such as Lou Gehrig's Disease[6]. We are not aware of any widely accepted scientific research (and certainly the SOMB does not rely on such research) connecting sex offending behavior with a physiological condition of any kind. Indeed, the SOMB guiding principles refer to sex offending as a behavioral, not a physiological, disorder. The use of the term "cure", the language of disease, distorts the nature of sex offending behavior by equating it with conditions like Lou Gehrig's Disease, which, although they can be managed to some degree, will in time inevitably run their course and can only have one ultimate outcome.

Sex offending is not a disease, it is a behavior. The terminology of the cure, in its most essential form, cannot reasonably be applied to a behavior – it simply makes no sense to speak of there being, or not being, a cure for a behavior. The word implies something much deeper, something fundamentally and physiologically wrong with individuals who commit sex offenses. Regardless of whether or not there is any support for such a view (we argue there is not), the distorting effect of this language on the public perception of sex offenders is profound. To conceive of sex offending as a disease enables an absolutist "us versus them" mentality among treatment providers and the general public. If there is something fundamentally wrong with sex offenders that is not wrong with me, then I am not like them and cannot relate to them. Suddenly it becomes very easy to advocate any sort of inhumane treatment of sex offenders which may be proposed, because after all, it is not as if they were normal people. Suddenly it becomes very easy to hate.

We contend that it is this fundamental distortion which leads inexorably to the extremist, "leper colony" style quarantine approach to sex offenders advocated by some containment proponents. Moreover, we have encountered public sentiment in the media and on the blogs in passionate and seemingly genuine support of such practices as locking up all sex offenders for life, shooting them immediately upon conviction, or the Czech practice of surgically removing their testicles. It is no coincidence that in a large percentage of cases the individuals justify their endorsement of such barbarism with the biting assertion, "There is no cure for these people!" What they obviously think this means is that all sex offenders are certain to offend again, since they have a disease that cannot be cured and which therefore can have only one ultimate outcome – offending.

Cure (n) – 3: something that corrects, heals, or permanently alleviates a harmful or troublesome situation.

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[5] Webster's New Collegiate Dictionary 276 (1979).

[6] We elect to use Lou Gehrig's Disease as an illustration here because it is a condition which genuinely has no cure, and is inevitably fatal.

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Cure (v) – 1 b: to bring about recovery from; 2 a: to deal with in a way that eliminates or rectifies; b: to free from something objectionable or harmful.[7]

If we must apply the term "cure" to sex offending behavior, it can only reasonably be based on the definitions above. Presumably, then, the assertion that sex offenders cannot be cured actually means that their offending behavior cannot be rectified, eliminated, corrected, or permanently alleviated. They cannot recover from, or be freed from, such behavior. Is this assertion accurate?

Current research demonstrates that it is not. Below is a table summarizing the results of recent studies on sex offender recidivism rates. We believe the numbers speak for themselves.

STUDY	SEXUAL RECIDIVISM RATE	FOLLOW-UP PERIOD	DEFINITION OF RECIDIVISM	SAMPLE SIZE
Hanson & Bussierre (1998)[8]	13.4%	4-5 years	Various	23,393
Ohio Department of Rehabilitation & Correction (2001)[9]	11%	10 years	Re-incarceration	14,261
Bureau of Justice Statistics (2003)[10]	5.3%	3 years	Re-arrest	9,691
Harris & Hanson (2004)[11]	14%	5 years	Charges or Convictions	4,724
	20%	10 years		
	24%	15 years		
Hanson & Morton-Bourgon (2004)[12]	13.7%	5 years on average	Various	31,216
Hanson & Morton-Bourgon (2005)[13]	14.3%	5-6 years	Charges or Convictions	19,267

In fact, the research indicates that 76% – 94.7% of convicted sex offenders do not recidivate. This is virtually the opposite of what the public has been led to believe, and drives researchers to the conclusion that "most sexual offenders do not re-offend sexually over time."[14] It is this

[7] Webster's New Collegiate Dictionary 276 (1979).
[8] R. Karl Hanson & Monique T. Bussière, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies", *Journal of Consulting and Clinical Psychology*, Vol. 66, No. 2 (1998), pp. 348-362.
[9] State of Ohio Department of Rehabilitation and Correction, "Ten-Year Recidivism Follow-Up of 1989 Sex Offender Releases", (April 2001).
[10] U.S. Department of Justice, Bureau of Justice Statistics, "Recidivism of Sex Offenders Released From Prison In 1994", NCJ 198281 (November 2003).
[11] Andrew J.R. Harris & R. Karl Hanson, "Sex Offender Recidivism: A Simple Question", Public Safety and Emergency Preparedness Canada (2004).
[12] R. Karl Hanson & Kelly Morton-Bourgon, "Predictors of Sexual Recidivism: An Updated Meta-Analysis", Public Safety and Emergency Preparedness Canada (2004).
[13] R. Karl Hanson & Kelly Morton-Bourgon, "The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies", *Journal of Consulting and Clinical Psychology*, Vol. 73, No. 6 (2005), pp. 1154-1163.
[14] Timothy Fortney, Jill Levenson, Yolanda Brannon, & Juanita N. Baker, "Myths and Facts About Sexual Offenders: Implications for Treatment and Public Policy", *Sexual Offender Treatment*, Vol. 2, No. 1 (2007).

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conclusion that has led the Center for Sex Offender Management[15], and even some members of Colorado's SOMB[16], to label the idea that all sex offenders re-offend as a "myth". So, if the great majority of convicted sex offenders do not recidivate, can it not be reasonably said that their offending behavior has been rectified, eliminated, corrected, or permanently alleviated? Have they not recovered from, or been freed from, the behavior?

We are aware of the objection that studies such as those cited above measure only re-arrest or re-conviction rates, and because many sex offenses go unreported actual recidivism is significantly higher. In response to this we observe that, while it is true that many offenses go unreported, it is likely that a large majority of unreported offenses are committed by individuals who have never been convicted of a sex offense. Convicted offenders are typically under such stringent supervision that those who do re-offend are very likely to be discovered.[17] So the findings of the studies cited are probably closer to the true numbers than some opponents have asserted.

What are we to make of the 76% – 94.7% who do not recidivate? If sex offending is a behavioral disorder, and a majority of offenders do not repeat the behavior, are they not "cured" by the definition given above? If not, why not? We suppose it will be argued that it is not in fact the behavior, but rather the "propensity to commit sex abuse"[18] which cannot be cured. The idea of a "propensity" indicates that there is some sort of inclination or tendency to commit sex abuse which is innate; that is, which is possessed from birth as an essential, inherent characteristic of particular individuals. Once more, we ask that any who take this view put forth scientific evidence in support of the existence of such a "propensity." This idea simply returns us to the language of disease.

Cure (n) – 2 c: a course or period of treatment.[19]

The SOMB has taken an approach to sex offender treatment which relies on cognitive-behavioral treatment models. In support of such models research is typically cited showing a cognitive-behavioral approach to be marginally more effective than other types of treatment in reducing sex offender recidivism. This type of treatment, however, is implicitly grounded in an understanding of sex offending primarily as a behavior resulting from distorted thinking patterns, and attempts to correct faulty thinking and consequently eliminate undesirable behavior.

When this treatment approach encounters the "no cure" philosophy of sex offending, only two conclusions are possible. If cognitive-behavioral therapy is indeed the best approach to treating sex offenders, then the problem is ultimately behavioral and the language of disease is misapplied to it. If, however, some sort of physiological problem is indeed at the root of the matter, we are on the wrong track with cognitive-behavioral therapy and should be seeking an

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[15] Center for Sex Offender Management, "Myths and Facts About Sex Offenders" (August 2000), at http://www.csom.org/pubs/mythsfacts.html (accessed 9/4/2009).
[16] Chris Lobanov-Rostovsky, "The Current State of Public Policy Towards Sexual Abusers: Myths, Facts, and Controversies", Presentation to the 23rd Annual International Conference on Child and Family Maltreatment, San Diego, CA (January 27, 2009).
[17] Franklin E. Zimring & Chrysanthi S. Leon, "A Cite-Checker's Guide to Sexual Dangerousness," *Berkeley Journal of Criminal Law*, Vol. 13, No. 1 (Spring 2008), pp. 68-69.
[18] §16-11.7-103(4)(a) C.R.S.
[19] Webster's New Collegiate Dictionary 276 (1979).

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exclusively medical solution. We believe the latter conclusion to be dangerously mistaken, and therefore assert the former.

III. THE INCONSISTENCY

A significant inconsistency in the application of the "no cure" philosophy also merits attention. We observe that this language is deliberately eliminated from the portions of Colorado statutes which deal with juvenile sex offenders.[20] Members of the sex offender treatment community consistently indicate that the "no cure" concept is not meant to be applied to juveniles[21]. We must ask: why not? Two observations militate against this division between juvenile and adult sex offenders.

First, if there truly exists a propensity – an innate, inborn inclination – to sexual offending, which cannot be cured, then there is no reason to suppose that adult sex offenders are any different from juvenile offenders. In this case the language of disease should be applied to all indiscriminately. Surely a 14 year old with Lou Gehrig's Disease is no more curable than a 44 year old. We unequivocally deny that there is any such propensity, and therefore contend that this language should not be used in reference to either juvenile or adult offenders.

Second, if sex offending is actually a behavioral disorder, then research demonstrates that this behavior is only marginally more "curable" in juveniles than adults. The following studies examined the sexual recidivism rates for juvenile sex offenders.

STUDY	SEXUAL RECIDIVISM RATE	FOLLOW-UP PERIOD	SAMPLE SIZE
Alexander (1999)[22]	7.1%	3-5 years	1000+
Reitzel & Carbonell (2006)[23]	12.53%	59 months on average	2986
Caldwell (2007)[24]	6.8%	5 years	249

According to research, 87.47% – 93.2% of juvenile sex offenders do not recidivate, compared to 76% – 94.7% of adult offenders. If juveniles stop recidivating with sexual offending behavior at only a slightly higher average rate than adults, why is it that adults cannot be "cured" but juveniles can? Should we not rather say that there is an average successful "cure" rate of 85% - 90% for both adult and juvenile offenders? Viewed in this light, the application of the "no cure" policy to either group appears ludicrous.[25] This is simply another example of the internal

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[20] See §16-11.7-103(4)(f) C.R.S.

[21] See, for example, Colorado Sex Offender Management Board, "White Paper on the Adam Walsh Child Protection and Safety Act of 2006", Colorado Department of Public Safety, Division of Criminal Justice (September 2008), p. 4 ("'no cure' philosophy for juveniles has no basis of evidence.")

[22] Margaret A. Alexander, "Sexual Offender Treatment Efficacy Revisited", *Sexual Abuse: A Journal of Research and Treatment*, Vol. 11 (1999), pp. 101-116.

[23] Lorraine R. Reitzel & Joyce L. Carbonell, "The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta- Analysis", *Sexual Abuse: A Journal of Research and Treatment*, Vol. 18, No. 4 (October 2006), pp. 401-421.

[24] Michael F. Caldwell, "Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders", *Sexual Abuse: A Journal of Research and Treatment*, Vol. 19, No. 2 (2007), pp. 107-113.

[25] Astute observers have noted that, in the original version of this paper, our argument in this section could potentially be interpreted as advocating more severe criminalization and punishment for juvenile sex offenders on

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inconsistencies inherent in the "no cure" philosophy. If this language makes no sense and is misleading, destructive, and counter-productive to the goals of the general assembly in creating the SOMB, why should it be retained?

IV. THE OBJECTIONS

Finally, we must address two more common objections to the abandonment of the "no known cure" terminology. First, it is often asserted that the majority of sex offender treatment programs around the country accept the "no cure" philosophy. We have seen no specific data on this point, and so we invite those who make such assertions to produce it. We can state with certainty, however, that not all treatment programs are based on the "no cure" concept. It is interesting, for example, to consider Minnesota's sex offender management program. In setting forth their "guiding principles for sex offender supervision", the "Adult Work Group Principles" include statements which echo the SOMB's guiding principles, such as "public safety is paramount" and "sexual offending is a behavior disorder." Conspicuously absent, however, is any language suggesting that sex offending cannot be "cured."[26] We are aware that this is only one example, but we have no doubt there are others. In any case, as any good attorney will tell you, "The mere number of witnesses appearing for or against a certain proposition does not in and of itself prove or disprove said proposition."[27]

Second, we occasionally hear it said that if one should ask a sex offender he would himself say that he cannot be cured. We answer that this is because such sex offenders have been indoctrinated into treatment programs which have **told** them they cannot be cured. The power of treatment programs to reshape the way individuals view themselves, highly beneficial if properly directed, can do untold damage when misguided by irrational concepts such as the "no known cure" philosophy. How does convincing an individual that he has an incurable disease, which will inevitably manifest itself as sex offending behavior, reduce recidivism? Will it not rather reduce such an individual to a state of hopeless resignation, his only recourse being to stop working toward change and simply accept himself for what he is? And then what will he do? Should we not instead be offering hope?

V. THE CONCLUSION

The concept that sex offending has "no known cure" has been encoded into Colorado statutes and incorporated into the guiding principles of the SOMB. The language, however, is confusing, contradictory, and misleading, and has numerous destructive consequences. It does not reflect current research on sex offender recidivism, nor does it contribute to the ability of the SOMB to fulfill its legislative duties. The "no cure" philosophy is internally inconsistent, undermines the efficacy of treatment programs, damages the motivation of offenders to become healthy,

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the basis that they are as "uncurable" as adult offenders. While this interpretation would have run counter to the tenor of the paper as a whole, we recognize that it was possible, and therefore offer several clarifying comments in this revised version. Moreover, we view this potential conclusion as fundamentally absurd and would hope that no rational individual would arrive at it. However, the application of the "no cure" philosophy to juvenile offenders by the federal government in the Adam Walsh Act cautions us that, when it comes to current sex offender law and policy, irrationality and absurdity appear to rule the day. This critical observation is therefore well taken.

[26] Minnesota Sex Offender Management, "Final Report" (February 15, 2007), p. 22.

[27] Colorado Jury Instructions – Criminal, § 3:05.

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productive members of society, and encourages the general public to despise all sex offenders as defective human beings.

This terminology does not effectively or accurately communicate anything truthful about sex offenders or offending behavior. If the intent of the language is to convey the idea that there is no 100% effective treatment for sex offenders which can infallibly ensure that they will not re-offend in the future, we naturally agree. There is no 100% effective method to ensure that **anyone** will not sexually offend, short of execution. But we suggest that there are much better ways to say this than with the language of disease. The "no cure" terminology found in Colorado statutes and the SOMB's guiding principles is dangerous and counter-productive, and should therefore not be retained for any purpose, but must rather be eliminated.

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