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Abstract

The current generation of community protection laws represents a shift in priorities that may see the individual rights of sex offenders compromised for the goal of public safety. At the center of many judicial decisions under these laws are the risk assessment reports provided by mental health practitioners. The widespread enactment of laws allowing for additional sanctions for sex offenders, and a burgeoning research literature regarding the methods used to assess risk have served to heighten rather than resolve the ethical concerns associated with professional practice in this area. This article examines ethical issues inherent in the use of two assessment methods commonly used with sex offenders in the correctional context, focusing on actuarial measures and polygraph tests. Properly conducted and adequately reported actuarial findings are considered to provide useful information of sufficient accuracy to inform rather than mislead judicial decision makers, although careful consideration must be given to the limitations of current measures in each individual case. Despite its increasing use, polygraph testing is considered controversial, with little consensus regarding its accuracy or appropriate applications. On the basis of the current state of the professional literature regarding the polygraph, its use with sex offenders raises unresolved ethical concerns.

Keywords

risk assessment, ethics, actuarial measures, polygraph, community protection

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The past 20 years has seen a shift in the balance between individual rights and community protection in the laws enacted for sex offenders. Jurisdictions across North America, the United Kingdom, and Australasia have passed legislation requiring the registration of sex offenders with law enforcement agencies, and all of the United States requires community notification when sex offenders are released into the community. Additional laws allow for the preventive or continuing detention of sex offenders, for extended periods of community supervision, and for indefinite civil commitment in a secure facility following the end of a prison sentence. This community protection emphasis emerged during the late 1980s and early 1990s as a response to the perceived inadequacies of previous models of dangerousness and society's statutory responses to provide for public safety. The forensic–clinical model of dangerousness that evolved in the United States during the early 1900s had advocated indeterminate confinement to allow for a disordered sex offender's condition to improve, thereby reducing risk and permitting release. The emphasis was on diagnosis of an underlying disorder, assessment of risk, and treatment. The justice model emerged in the 1970s and reemphasized determinate sentences in proportion to the seriousness of the offence. In combination with increased attention to due process and civil rights of persons with mental health impairments, this resulted in lengthy involuntary civil commitments becoming more difficult to obtain (Petrunik, 2003).

The community protection model emerged during the late 1980s and early 1990s following widely publicized cases of violent sexual offending that provoked community outrage. In contrast to the justice model, the community protection approach is less concerned about due process, the proportionality of punishment to the crime, and the protection of offenders' liberty or privacy rights. In contrast to the forensic–clinical model, it is less concerned about treatment or rehabilitation of offenders intended to reduce recidivism or facilitate community reintegration. The primary goal of the community protection model is the incapacitation of sexual offenders for the sake of public safety.

A parallel development of community protection laws for sex offenders has been a burgeoning professional literature on risk assessment with sex offenders. A substantial body of empirical evidence regarding the risk factors for sexual reoffending has been produced, driven in part by the central role that risk assessment findings often play in the judicial decision making required by current sex offender laws. Yet these developments have served to heighten, rather than resolve, ethical concerns related to the professional practice of sex offender risk assessment. The stakes of individual liberty and community safety in legal proceedings for sex offenders are high, and practitioners must remain aware of the ethical ramifications of their participation as experts in such cases. Understanding and effectively conveying the strengths and limitations of our current assessment methods are essential to ethical practice in this area. The purpose of this article is to review assessment procedures typically used with sex offenders so as to identify ethical concerns that are inherent in their application.

An Ethical Framework

Consideration of the ethical implications of sex offender assessment requires an explicit ethical framework. The framework utilized here has been articulated by Ward and colleagues (Ward & Birgden, 2007; Ward, Gannon, & Vess, 2009; Ward & Syversen, 2009). In this conceptualization, ethical principles serve to protect fundamental human rights. These rights in turn serve a protective function that reflect the core values of freedom and well-being, creating conditions that allow individuals to pursue their own intentions and maintain a basic sense of human dignity. Human dignity includes concepts such as autonomy, liberty, and social recognition, and is held to be a moral concept that applies universally to all individuals. The respect that follows from dignity cannot be forfeited or lost, but also implies that individuals are obligated to respect the dignity entitlements of others. So from an ethical perspective, although individuals' fundamental moral equality cannot be stripped away, this same dignity enables the community to hold people accountable for their actions, sometimes justifying the curtailment of their liberty in response to their behavior (Ward & Syversen, 2009).

General ethical principles and specific ethical standards such as those contained in the American Psychological Association's (APA) Ethical Principles of Psychologists and Code of Conduct (APA, 2002) can be seen as reflecting the underlying core values of freedom and well-being (Ward et al., 2009). The five APA general ethical principles include beneficence and maleficence, fidelity and responsibility, integrity, justice, and respect for people's rights and dignity. It is from this perspective of human dignity, as protected by the concept of fundamental human rights and reflected in general ethical principles, that risk assessment practices are examined.

Practical Professional Issues: Roles, Boundaries, and Informed Consent in a Context of Coercion

Before considering specific assessment methods, there are several professional practice issues that warrant ethical consideration when conducting risk assessment with sex offenders and enacting the role of expert in legal proceedings. As noted elsewhere (Vess, 2009), mental health professionals may play a variety of roles in relation to the assessment and treatment of sex offenders, and the boundaries of these roles are sometimes potentially problematic. It should remain clear that the client in judicial decision-making contexts is the court or other state body, and that the primary responsibility of the assessment expert is to provide accurate and objective information relevant to the legal test of risk for sexual reoffending (Doyle & Ogloff, 2009). Whether the legal test is met and any sanctions that follow remain the prerogative of the judicial body. The assessment expert is required to remain nonpartisan throughout the assessment process, report preparation, court appearance, and any consultation with the attorneys involved, regardless of which side in the matter has retained the expert.

These boundaries become more complicated when psychologists have also been in a treatment role with the offender, or have been brought in to be a trail consultant to the legal team attempting to obtain a particular judicial outcome (see, for example, Bush, Connell, & Denney, 2006). Cases where the risk assessor has also been in a treatment role are particularly sensitive, given the trust and therapeutic alliance that is necessary for effective treatment. There is an inescapable tension between the encouragement to be self-disclosing for the sake of treatment and the threat that this information will subsequently be used to curtail the liberty of the offender when incorporated into risk assessment reports to the court or parole board. This tension comes into particularly sharp focus when methods like the polygraph are used, as discussed below, but is a part of all therapeutic exchanges that are typically excluded from the usual protections of confidentiality in the context of mandated assessment and treatment for sex offenders. The offender must recognize that what he says can and will be used against him (from his perspective) in a court of law. That this may have a chilling effect on treatment in the coercive correctional environment is unavoidable as current sex offender regimes are structured.

In this context, informed consent takes on a special significance because of the limits of confidentiality and the potentially severe consequences of subsequent risk assessment findings for sex offenders. When the mental health professional is acting as an agent of the state, either as a therapist or risk assessor, the limits of confidentiality and all potential uses of any information disclosed by the offender must be made completely clear. This raises problems with the usual clinical approach taken with clients in most other situations, based on the ethical principle of fidelity and responsibility, which requires honesty and transparency in professional activities. In order to effectively assess an individual, including a sex offender, rapport is required, and rapport involves an element of trust. The clinician is saying to the offender, in essence, that it is best if you tell me enough about yourself that we understand how your offending has happened and how it might happen again. Yet it may not be best for the offender's liberty and well-being if, as a result of these disclosures, he is placed on extended supervision or civilly committed to a treatment facility for posing an unacceptable risk to the community. This is especially so in light of the limited accuracy of current risk assessment procedures used to advise the court regarding the risk posed by individual offenders.

Procedural Issues: Assessment Methods

Actuarial measures: Issues of accuracy and the nomothetic–idiographic divide. There are several aspects of using and reporting actuarial measures in sex offender risk assessment that have ethical implications. Some of these have been covered elsewhere (Vess, 2008, 2009; Vess, Ward, & Yates, in press), and will not be reiterated in detail here. The primary sources of concern are the degree of predictive accuracy with available measures, and the use of group-derived measures for conclusions about risk with individual offenders. Stated briefly, actuarial instruments such as the Static-99 have high reliability (i.e., scores are consistently replicable when administration follows

standardized procedures) moderate predictive validity as measured by statistics such as ROC analysis, and consistently outperform unstructured clinical judgment in assessing risk (Grove & Meehl, 1996; Hanson & Morton-Bourgon, 2009). Yet a continuing point of controversy is whether current instruments have sufficient accuracy to warrant their use in legal proceedings that provide sanctions for behavior that may be exhibited in the future (risk for sexual reoffending) rather than past criminal offences. In other words, can these instruments inform rather than mislead the judicial decision maker in cases focused on sex offender risk. Embedded within this question are several issues regarding the empirical validation and appropriate application of a given measure such as the Static-99. One is the degree to which an individual offender is similar to or different from the normative samples used in the empirical validation of the measure.

This issue is reflected in the recent reporting of new norms for the Static-99 (Helmus, Hanson, & Thornton, 2009). One important difference with previous recidivism estimates in the Helmus et al. report is that recidivism data are presented separately for two distinct groups of sex offenders. Sexual recidivism rates are reported for a set of samples drawn from "routine" sex offender prison cases and for a set of samples preselected to be high risk, meaning those judged by an administrative or judicial body to warrant exceptional measures such as a treatment order, preventive or indefinite detention, or denial of statutory release. Controlling for Static-99 scores, the rates of sexual recidivism for the routine samples were less than half (41%) of those for the high-risk samples. This points out the importance of considering the sample from which a given study's results are derived, as samples will vary in observed recidivism rates.

Helmus et al. (2009) make specific recommendations about assessing and reporting risk in light of these new norms for the Static-99: "Differences in recidivism with each Static-99 score on the bases of sample type and offender type suggest that evaluators can no longer, in an unqualified way, associate a single Static-99 score with a single recidivism estimate. Instead, each Static-99 score is associated with a range of recidivism estimates, and evaluators must make a separate judgment as to where a particular offender lies within that range. This new conceptualization of recidivism norms forces evaluators to consider factors external to the risk scale. Although the best method of considering these external factors is as yet unknown, there are several factors worth considering in this decision. These factors include the risk-relevant characteristics of the population from which the offender is selected (as described above), as well as risk-relevant characteristics of individual offenders." (p. 40)

The broader issue here is how different an individual offender is from the samples of offenders on which a measure has been validated. The more an offender differs from those whose outcomes have been studied with a particular measure, the less confidence we can have in using that measure with such an individual. This becomes particularly salient, for example, with female offenders, who make up such small portions of sex offender recidivism samples that there is no empirical foundation for using current actuarial risk measures. The developers of measures such as the Static-99 explicitly advise not to use these measures with female offenders for this reason. The

question in each case is whether there is reason to believe that this individual falls sufficiently outside the actuarial validation samples that the instrument will not likely be associated with his risk for reoffending. This point is made by Craig, Beech, & Harkins (2009), who stated,

> Actuarial estimates of risk may be misleading for unusual individuals with characteristics that were not well represented in the samples used to construct or test the actuarial measures. For example, the sexual reconviction rate of sexual offenders with learning disabilities was found to be 6.8 times and 3.5 times [greater] that of non-learning disabled sexual offenders at two-year and four-year follow-up in a study by Craig and Hutchinson (2005). Base rate may also differ depending on setting (e.g., hospital or prison populations) (Rogers, 2000), or ethnicity (Langstrom, 2004) (p. 65).

An additional issue related to the accuracy of actuarial risk assessment measures is whether they can be appropriately applied with individual offenders. This issue was highlighted by Hart, Michie, and Cooke (2007), who concluded that the margin of error for actuarial risk assessment instruments is far too great to be used to estimate an individual's risk for future offending, and should be used with great caution or not at all. However, this position has been criticized on several points, as recently summarized by Craig and Beech (in press). These authors cite evidence that the replication studies for the Static-99 provide empirical evidence that is more consistent than would be the case if the measure were as inaccurate as Hart et al. assert, and suggest that the internal logic of their argument regarding risk in terms of probability is inconsistent. Additional criticisms have focused on the mathematical basis for the margin of error figures, whereby the substitution of the number "1" in place of the group figure of "*n*" in the formula used for calculating the margin of error renders the results uninterpretable (Mossman & Sellke, 2007; Harris, Rice, & Quinsey, 2007). The idea that it is wrong to use group data as a basis for decisions about individuals has been refuted previously (Grove & Meehl, 1996; Harris et al., 2007; Quinsey, Harris, Rice, & Cormier, 2006).

One further point about the accuracy of actuarial risk measures concerns how it is measured and described. Doren (2006) observed that risk assessments do not typically make behavioral predictions that an offender will or will not reoffend, so that the term *risk prediction* is inappropriate (as opposed to meaningful terms such as *risk assessment* or *recidivism prediction*). Therefore, it is not useful to talk about false positives and false negatives, and the related results of ROC analysis, to describe the accuracy of an individual risk assessment, nor to describe the accuracy of a risk assessment instrument as a whole.

A final consideration regarding actuarial-based methods is the process by which actuarial results are adjusted by consideration of dynamic risk factors, and whether this introduces nonstandardized, subjective sources of error to a degree that raises ethical concerns when an offender's rights are at stake. Doren (2006) noted that there are

two issues involved here. One is an apparent misunderstanding by some that clinical adjustments to an actuarial result involve altering the score or its typical interpretation as a stand-alone finding. Doing so would negate the utility of the actuarial measure derived from its underlying empirical validation. The relevant issue is process by which the practitioner uses the actuarial results as they are, and then considers additional factors considered relevant to adjust the overall estimate of risk. All but the most mechanical utilization of actuarial measures in risk assessment involves clinical judgment, but there are scientific and unscientific reasons (i.e., without empirical support) for making clinical adjustments to actuarial findings. Recognizing that current actuarial measures do not include all factors associated with risk for sexual reoffending, such as the combination of psychopathy and deviant sexual arousal, and are not responsive to changes in risk status, there are defensible reasons for making certain adjustments in the overall formulation of a risk assessment. This does not, however, provide latitude for adjusting actuarial results based on whatever the practitioner believes to be relevant. Doren (2002) has reviewed research findings regarding relevant risk factors beyond those in current actuarial measures.

Ethical considerations with actuarial assessment. The ethical principle of beneficence and nonmaleficence is intended to protect the well-being of individuals with whom psychologists work. In the context of risk assessment with sexual offenders, where the findings in a risk assessment report can have significant bearing on the outcome of legal proceedings to determine an offender's liberty, this principle also bears on the core value of freedom that underlies basic human rights. Practitioners, therefore, have an ethical obligation to conduct risk assessments that provide the most accurate available information regarding risk, and to report their findings with sufficient caveats and qualifications as needed to allow the limits of their utility in an individual case to be recognized. Actuarial measures with repeated empirical validation currently provide the most accurate estimates of risk, but should only be used with offenders who are sufficiently similar to those on whom the instrument has been validated. Large-scale validation studies conducted with the local offender population are optimal, but are not available in many jurisdictions. When precise probability estimates are reported, the associated margin of error (e.g., 95% confidence interval) should also be reported in order to provide a clear sense of the relative accuracy of the estimate. Some have recommended that if confidence intervals for a measure are not known, then precise numerical estimates or risk should not be reported because the precision of the estimate cannot be evaluated (Heilbrun, Douglas, & Yashuhara, 2009). It should also be made clear that such confidence intervals apply to groups of individuals, and that the margin of error is higher in the case of an individual. For this reason, it can never be concluded that an individual has the precise probability of reoffending suggested by the group recidivism estimates. These limitations must be clearly conveyed.

Polygraph—lie detection, truth facilitation, or manipulation. According to a recent large-scale survey, the most dramatic increase among psychological assessment instruments with sex offenders has been in the use of the polygraph (McGrath, Cumming,

Burchard, Zeoli, & Ellerby, 2010). Since 1992, use of the polygraph has increased from 29% to 79% in community adult programs, and from 16% to 56% of residential programs. During this period, the percentage of adolescent community programs using the polygraph has risen from 25% to 50%, and from 19% to 46% of adolescent residential programs. Yet as Iacono (2009) has stated,

> Probably no form of psychological assessment is more likely to change the lives of those who submit to the procedure that the polygraph test. Whatever good comes from polygraph testing needs to be weighed against outcomes that can lead to mistaken prosecution, unjustified imprisonment, freedom for criminals, blackened reputations, loss of livelihood, family discord, and the lengthening of a sentence. The profound consequences that follow from polygraph verdicts, coupled with their lack of scientific foundation, also ranks polygraph among the most controversial of applied psychological procedures (p. 224).

In order to consider the ethical concerns raised by the use of the polygraph, it is necessary to understand the nature of the procedure as typically used with sex offenders. Of the various polygraph techniques, the most commonly used in the assessment and monitoring of sex offenders is the control or comparison question test (CQT). All polygraph techniques work by recording physiological responses to various questions posed by the examiner; a partially inflated cuff around the arm measures changes in blood pressure, pneumatic tubes around the chest and abdomen measure respiration, and electrodes on the fingertips measure changes in palmar sweating (Iocono, 2009). Heart rate may also be recorded. The CQT works by using control questions that cover past transgressions presumed to be a part of everyone's life and intended to elicit a lie from the examinee. The physiological responses to these control questions are compared to relevant questions that address the issue at hand, such as instances of sexual abuse. It is assumed that a truthful examinee will not be physiologically aroused as much by their denial of the relevant questions as they are by the probable lie to the control questions. Conversely, the deceptive examinee is expected to respond more strongly to the relevant question because it deals with a more serious matter (Iacono, 2008). In order to facilitate this effect, a CQT is preceded by a lengthy interview in which the examinee is led to believe that the polygraph is virtually infallible. Therefore, the innocent examinee can confidently deny the relevant questions, but should believe that a deceptive answer to any questions will lead to a failed (i.e., deceptive) test outcome. However, the examine is also pressured by the examiner into answering "no" to the comparison questions by the suggestion that confessing illegal activities will negatively influence the examiner's opinion (Meijer, Verschuere, Merckelbach, & Crombez, 2008).

There are several points of controversy associated with the CQT that have been reviewed in the professional literature. One long-standing criticism of the polygraph is that there is no known physiological response that is unique to lying (Raskin, 1986). Another concern is the possibility that innocent examinees may react more strongly to

the relevant questions, as these may strike the subject as more serious and more threatening than control questions. There are also reasons why a deceptive person may not react more strongly to the relevant questions (Cross & Saxe, 2001). Several psychological experts have asserted that the theory underlying the CQT is implausible (Ben-Shakhar & Furedy, 1990; Iacono & Lykken, 1997, Lykken, 1998). But one of the primary concerns regarding the polygraph is the unresolved debate over its accuracy. There appear to be two distinct camps in this debate. One side consists primarily of polygraph practitioners, who cite high accuracy rates for the polygraph (see, for example, Grubin, 2008; Raskin & Honts, 2001). On the other side are scientists who assert that the accuracy of the polygraph remains unvalidated, that the studies cited by proponents of the procedure have fundamental methodological flaws, and that there are as yet no scientifically supported uses of polygraph tests (Ben-Shakhar, 2008; Iacono, 2008, 2009).

The primary methodological flaw for which existing studies of polygraph accuracy are criticized is the problem of establishing the ground truth as to whether an examinee is lying. Following a failed (deception indicated) CQT, examiners are trained to interrogate examinees to obtain confessions of the deception (Iacono, 2009). Proponents of the polygraph such as Grubin (2008) object to the characterization of this interaction as an interrogation, and assert that polygraph examiners interview rather than interrogate sex offenders in the postconviction examination context to elicit truthful disclosures and to facilitate engagement. Confessing to deception in response to the confrontation by the examiner becomes the criterion for assessing the accuracy of the polygraph in almost all field studies to date. Iacono (2009) argued that this represents a major confound that undermines these validity studies, such that when an innocent person fails a test but resists a false confession, the examiner is unlikely to learn about this outcome (attributing for example disagreement between polygraph results and a courtroom verdict as due to imperfections in the legal proceedings). Similarly, when a guilty person passes the CQT, no confession is sought and this error will also go undetected. Because of this selection bias in the cases used as evidence for the accuracy of the CQT, results of such studies are believed to overestimate the accuracy of the results.

It has been argued that the utility of CQT results justify its use regardless of its empirical level of accuracy, whereby the polygraph result itself is less important than either the information provided by the offender (Grubin, 2008, Grubin & Madsen, 2006) or decreases in high-risk behavior when offenders are subjected to polygraph examinations (Grubin, Madsen, Parsons, Sosnowski, & Warberg, 2004). The general evidence for the reliability and validity of the polygraph, and the specific utility of the polygraph in the assessment and treatment of sex offenders were recently reviewed by Levenson (2009). Studies have reported that sex offenders subjected to postconviction polygraph examination disclose significantly more about their sexual offending than they have previously disclosed (Ahlmeyer, Heil, McKee, & English, 2000; English, Jones, Patrick, & Pasini-Hill, 2003). This additional information has the potential to enhance risk assessment and risk management with sex offenders in treatment and

supervision settings, especially in light of the concern that official records may provide a poor account of sex offenders' deviant interests, choice of victims, and the extent of their sexually abusive behavior patterns (Levenson, 2009; see also Gannon, Beech, & Ward, 2008 for a review of the applications and current evidence of the polygraph in risk assessment).

In this context, the polygraph is viewed more as a truth facilitator than a lie detector. Yet this position accentuates the issue that an essential element of the polygraph is manipulation of the examinee (Cross & Saxe, 2001). In the pretest interview, attempts are made to convince the examinee that the polygraph is almost infallible, although many scientific reviews have argued that this is far from established (Iacono, 2009). Examinees are also induced to lie to the control questions in order to establish a basis for comparison of physiological responses to the relevant questions. When the results are interpreted as indicating deception, the examiner will typically confront the examinee in the post-test phase and try to obtain an admission that the examinee lied during the examination. Most polygraph examiners are trained in skills to elicit confessions, and many have law enforcement backgrounds (Holmes, 1995; Iacono, 2009). The primary mechanism at work in producing previously undisclosed information through polygraph examination is the belief that the procedure can determine honesty, even though in the view of many researchers this has not been conclusively demonstrated.

As for the utility of the polygraph in reducing recidivism, limited information is available. A study by McGrath, Cumming, Hoke, and Bonn-Miller (2007) compared 104 adult male sex offenders receiving community cognitive-behavioral treatment and periodic polygraph compliance examinations with a matched group of 104 sex offenders who received the same treatment and supervision services but no polygraph exams. Over a fixed 5-year follow-up period, there was no significant difference between the groups for the number of offenders charged with new sexual offending (5.8% with polygraph vs. 6.7% without), any sexual or violent offending as a combined category (8.7% vs. 16.3%), or any criminal offending (39.4% vs. 34.6%). There was a significant difference in the number of offenders charged with committing a new nonsexual violent offense, with 2.9% of the polygraph group versus 11.5% of those not subjected to polygraph exams. Service providers were also surveyed for this study, and the majority reported that they believed the information obtained as a result of the polygraph examinations was valuable, with 96% of those responding rating the polygraph exams as helpful or very helpful. Supervising correctional officers rated the polygraph as significantly more helpful than the treatment providers who were surveyed.

One other perspective on the accuracy and utility of the polygraph is that of the offenders themselves. Kokish, Levenson, and Blasingame (2005) conducted a study with 95 sex offenders in three northern California outpatient sex offender treatment programs that required polygraph examinations. Nineteen percent of these participants reported having been incorrectly labeled as deceptive on 22 separate polygraph exams, which corresponds to 6% of the overall total examinations taken, but also appears to represent over a third of the total of 60 deception indicated examination results. Twenty-three percent of those claiming false-positive results (a total of five participants)

reported responding to false-positive examinations with fictitious admissions. Six percent claimed that they were incorrectly rated as truthful after lying on 11 separate exams (3% of total examinations). Consistent with an earlier study (Harrison & Kirkpatrick, 2000), most offenders (72%) in this study reported that they were helped in their treatment by the polygraph, whereas relatively few (11%) stated that they were harmed by the experience. Those that found it helpful indicated that the polygraph forced them to be more truthful with themselves, their therapists, and other group members, and that they were thereby also becoming more truthful with loved ones. Harmful results that were reported included negative moods associated with facing unpleasant realities, resentment over invasion of privacy, and stress resulting from being wrongly accused of deception.

Ethical Considerations in Use of the Polygraph

Postconviction sex offender polygraph testing has several applications, including full disclosure regarding sexual history, specific issue exams to verify the details of a specific incident, and maintenance or monitoring exams to verify whether an offender has been compliant with treatment or supervision requirements (McGrath et al., 2010). The dilemma for those involved in the assessment and treatment of sex offenders is that they are accountable to offenders for competent and ethical behavior, but also to the community for treatment effectiveness and protection against further offending. Assessment and management of sex offenders is inherently coercive, and in this context consideration must be given to the balance between respecting the individual rights of the offender and using the most effective available methods to inform risk assessment, treatment, and supervision decisions (Kokish, 2003). The CQT version of the polygraph has been criticized as an unstandardized procedure with unproven accuracy, which is based on deception of the examinee and manipulation or intimidation to elicit disclosure of information (Iacono, 2009). Some have questioned the ethics of using an unvalidated test, and pointed out the contrast between requiring honesty from the offender for the successful completion of a treatment program when relying on a test that is based on deception (Meijer et al., 2008). For treatment staff, the potential for damage to the therapeutic alliance through inaccurate polygraph results is high. Protection from self-incrimination is an ethical and policy concern, as is the proper response to deception indicated polygraph results. The question of how to proceed when the polygraph examiner identifies deception in the absence of corroborating evidence or a confession by the offender remains unresolved, with some calling for standardized sanctions and others maintaining that sanctions or privileges should not be based on polygraph results (Cross & Saxe, 2001).

Postconviction use of the polygraph with sex offenders can be examined in relation to the APA ethical principles, with their basis in the fundamental values of freedom and well-being. Of direct concern is the principle of fidelity and responsibility, which is designed to promote trusting relationships between psychologists and offenders, and the principle of integrity, which requires that psychologists not deceive or mislead

offenders. The preceding review demonstrates how elements of the CQT polygraph procedure can potentially violate these principles. Related concerns include confidentiality and informed consent. In order to make informed decisions about how to act, individuals require accurate information and honesty from practitioners, conditions that may not be met with the polygraph. Information that is revealed as a result of polygraph examination typically does not remain confidential or privileged, and has the potential for severe consequences, including prosecution for previously undisclosed crimes. Examination questions may be structured so as to avoid detailed disclosures leading to prosecution, or limited immunity for pretreatment crimes sometimes be arranged, but compelling an offender to reveal information that leads to punitive sanctions, even for the sake of treatment effectiveness or public safety, remains ethically questionable. Others have noted that although there is evidence to support polygraph use in some areas of risk assessment (Gannon et al., 2008), there is currently no evidence that postconviction sex offender polygraph testing reduces post-treatment recidivism, and programs utilizing such testing risk generating false admissions and wrongfully sanctioning program participants (Kokish, 2003).

Conclusions

Assessment of sex offenders are conducted in a coercive legal context that requires the balancing of individual rights and public safety. Properly conducted and responsibly reported actuarial risk assessment findings can usefully inform judicial decisions, and identify important areas for treatment and supervision. Empirically validated actuarial measures represent the most accurate basis for risk assessment with sex offenders currently available, and practitioners are ethically obligated to use the most accurate methods at their disposal. But some areas of assessment, including both historical static risk factors and current dynamic risk factors, rely to various degrees on information disclosed by offenders. This is where the polygraph has the potential to contribute to effective assessment. Yet the issues of accuracy and ethical use of the polygraph are inseparable, and the accuracy of the polygraph is still not firmly established despite many years of effort. Critics fear that setting professional practice standards for such a flawed procedure only enhances an illusion of scientific credibility (Kokish, 2003). Although proponents of the polygraph argue that accuracy is not the primary issue as long as the technique is effective in producing useful information, the current review suggests that use of the polygraph continues to present ethical dilemmas. In light of this unresolved ethical debate, practitioners conducting assessments with sex offenders involving the polygraph are advised to proceed with caution.

One ethical issue for practitioners to consider is the degree of deception or manipulation of the examinee that are employed before and after a polygraph examination. If these are present to an extent that appears incompatible with the standards for honest and straightforward behavior expected of the client, and generally expected of practitioners in their professional code of conduct, use of the polygraph should be reconsidered. Conclusions that the polygraph is virtually never wrong cannot currently be

substantiated; to attempt to convince an offender that results are always accurate or to apply sanctions to offenders on the basis of deception indicated polygraph results do not appear ethically unjustifiable. Program policies and procedures that include these elements potentially conflict with ethical principles. Practitioners must also be mindful of the potentially damaging effect of the procedure, especially in cases of failed examinations, on the therapeutic alliance with supervision or treatment staff required to act on the outcomes of these examinations. Although the limited literature that is available may suggest that many offenders find the use of polygraph examinations helpful to their treatment, any advantages gained by additional risk-related information elicited or enhanced compliance with treatment or supervision requirements must be weighed against the potentially damaging effect to the therapeutic process. Each situation in which the polygraph is used should be carefully considered in light of the values that underlie our ethical principles, and practitioners should be prepared to advocate for limiting or eliminating polygraph procedures in instances where these principles are violated.

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