

**ORGANIZATIONAL PSYCHOLOGY AND TECHNOLOGY: ETHICAL, LEGAL AND PRACTICAL
ISSUES RELATED TO ACTIVE LISTENING AND WORK-RELATED STRESS
MONITORING IN ITALY AND EUROPE**

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ABSTRACT

Active listening is a powerful tool for the prevention and reduction of organizational disease and stress as well as for performance enhancement and even corporate social responsibility development. Active listening and wider work-related stress monitoring, as proven in literature and by several ongoing action-research experiences, can be made particularly effective if implemented in organizations through both traditional and technological methods, such as telephone and web-based chats, synchronous and asynchronous video-messaging and communicating tools, anonymous e-dropboxes and whistleblowing solutions, electronic questionnaires, and active monitoring technologies, just to name a few. While these technologies can have a positive impact on psychological intervention in organizations and, therefore, on the life of workers, they pose a series of ethical and legal issues. Some of them are still strongly debated and are under scrutiny of professional boards and governmental bodies. In Italy, the National Board of Psychologists has recently published guidelines for the web-based psychological practice. The European and Italian Parliaments have also produced several new norms that impact on the possibility of psychological interventions. Technology does not only involve the difficulty of the legal systems to follow the pace of its evolution, but also poses concrete difficulties in professional psychological applications, often related with the technological gap between the theoretical possibilities and the capabilities and instruments of the target organizations.

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This work aims to analyze some of these legal and applied issues and to propose, on the basis of a wide legal analysis and real case-study discussions, concrete solutions for incrementing the efficacy of the psychological interventions.

Keywords: active listening; work-related stress monitoring; legal issues in psychology; deontology; psychologists' ethics; technology

INTRODUCTION

The impact of technology on applied psychology is visible to everybody: things that were unthinkable just a few years ago - like the widespread use of biofeedback instruments or virtual reality for psychological interventions in organizations and the development of advanced e-recruiting systems, to name just a few - are now normal practice not just in universities and research contexts, but also in the most developed and advanced organizations, and are fast becoming known and adopted also in "average" companies and organizations thus changing the perspectives, the presence and the perception of psychologists (Gueutal & Stone, 2005; Kavanagh, Thite, & Johnson, 2015).

Organizational well-being and work-related stress monitoring make no exception to this trend: the impact of technology allows different and new approaches, can lead to improved results and permits digging deeper inside the organizational contexts in order to discover more risks and disease situations (Coovert & Thompson, 2014).

Among the activities that can be implemented in an organization in order to better evaluate work-related stress there is the "passively set active listening service" (De Carlo, 2013): this practice allows the organizations to constantly monitor the general organizational climate and, more specifically, the levels of work-related stress by assuming a passive stance and giving their workers the possibility to contact the active listening services. Such a practice can be introduced in the organizational set of tools for measurement and risk prevention instead of constantly running active surveys, which are undoubtedly useful to "take a picture" of the situation at the moment of the survey itself but fail to be constantly updated by new and current information.

Before the advent of recent technologies, such a form of active listening could be implemented only through the direct professional activity of a psychologist, in dedicated places inside or outside workplaces (Clough, March, & Chan, 2017; Sawhney, Jennings, Britt, & Sliter, 2017). This posed, along with logistical issues such as booking and finding the time to reach the psychologist, the problem of stigma, which was often associated (and still partially is, at least in some areas of Italy and Europe) with requesting psychological help (Sun, Hoyt, Brockberg, Lam, & Tiwari, 2016; Basaglia & Paolino, 2015) or even just counseling. Nowadays, instead, active listening can be carried out through a mixture of traditional and technological methods. The technologies involved can be more or less recent, such as telephone, web-based chats and video-messaging, they can be synchronous and asynchronous, they can be completely anonymous tools such as e-dropboxes, whistleblowing solutions and electronic questionnaires.

An example of such an activity, currently being carried out in Italy on more than 50.000 workers is the service named IF-*Informazione&Fiducia*. This active listening service for the monitoring of work-related stress is based on the dual function of listening/counseling and information gathering. The latter is particularly important as IF-*Informazione&Fiducia* sends a quarterly report to the adopting organization in which the information collected is organized on the basis of the multi factor model underlying the Q-Bo test (De Carlo, Falco, & Capozza, 2008), one of the widest and most validated models currently available. Such a service can actively reduce organizational issues such as sick-leaves, injuries, legal disputes, insurance costs, refunds, worsened organizational climate, lowered quality, attention, and performance, turnover, absenteeism/presenteeism, decreased image and

public relations (De Carlo, 2013). In particular, reducing the cost of turnover which is estimated to be on average 7.000 euros per year per worker (Donaldson-Feilder, Yarker, & Lewis, 2009), and the average cost of sick leaves connected with organizational disease, estimated to be on average € 500 per year for every worker (CIPD, 2008) were the principal interests of the organizations that implemented IF- *Informazione&Fiducia*.

OBJECTIVES AND METHOD

While new technologies allow different and often more effective interventions, the dark side of this evolution is related with ethical and legal issues that accompany some practical problems related with the perception and introduction of new technological ways of psychological intervention in organizations.

In this work a survey of legal, deontological and ethical aspects was carried out to identify some advantages and issues related with technologically driven active listening interventions and work-related stress monitoring. The codes consulted were mainly Italian but also European, in order to obtain a picture that can be useful for professionals and organizations wishing to introduce such a service to improve the levels of organizational well-being and reduce work-related stress. For this reason the overview of the sources involved also documents published by the Italian National Board of Psychologists which include concrete and practical issues related to technology mediated psychological interventions alongside the ethical and deontological issues.

RESULTS

Monitoring work-related stress is a practice useful for carrying out a diligent and effective assessment of risks deriving from work-related stress, in fulfillment of the obligations that national and European regulations on safety in the workplace (in particular for Italy see Legislative Decree 81/2008, but similar regulations apply in all European countries) define the employer as the figure in charge. Moreover, unlike other types of monitoring systems (such as the traditional ones performed through the administration of questionnaires or interviews in the company), monitoring using new technologies (such as telephone, chat, dropboxes) allows not to have any interruptions in the analysis of the organization since it consents an analysis that lasts over time.

In fact, at least theoretically, the psychologists who carry out the monitoring activity can be consulted for the whole period of time considered, without periods in which this possibility is absent. In fact, lack of contacts would involve the free choice of workers not to use the service. In this direction, the service IF-*Informazione&Fiducia*, referred to above as an example, is also supplemented by the forecast aspect related to the quarterly reports that serve the purpose of supporting decision making in the context of human resource management policies and compliance with internal rules and national and European regulations. This monitoring model concretely demonstrates the company's constant attention to health and organizational well-being, as it defines quarterly any critical issues that workers choose to communicate anonymously and safely, and provides advice for corrective and necessary improvement actions. The quarterly reports are, *inter alia*, sufficient to prevent long-term phenomena, such as mobbing, and to identify and prevent any situations of health risk or improper behavior. The results collected through these quarterly reports are also suitable to be added to the Risk Assessment Document provided for by Legislative Decree 81/08.

The fact that companies become a diligent party with the adoption of the best scientific monitoring practices, such as those using new technologies, is an extremely diligent approach to fulfilling the required obligations in terms of site safety of work. The best, certified and demonstrable application of the regulations even beyond the minimum legal obligations (for Italy, in addition to the aforementioned Legislative Decree 81/2008, State-Regions Agreement of 21 December 2011, GU

No. 8 of the 11/01/2012, D.M. 24/03/2004 on organizational well-being, Legislative Decree 231/01) contributes in fact to protecting the company and preventing litigation. In fact, the adoption of a technologically innovative monitoring system allows companies to diligently fulfill the prevention obligations imposed by the legal system on the part of the employer to protect the health (physical and moral) of the employee, first and foremost, on the basis of the European and constitutional principles on the subject (for Italy, see the provision referred to in Article 41, second paragraph, of the Constitution, according to which the private economic initiative “can not be carried out in contrast with social usefulness or in a way that harms security, freedom and human dignity”). Moreover,

according to various rulings of the Supreme Court, the obligation of prevention that pursuant to art. 2087 c.c. burden on the employer “requires the entrepreneur to adopt not only the measures required by law in relation to the type of activity carried out, which represent the minimum standard set by the legislator for the protection and safety of the worker, but also other measures required by the specificity of the risk, given that the worker’s safety is a good protected by art. 41, second paragraph of the Constitution” (Cassation No. 18211/2012, Box 6337/2012). The attitude that companies are invited to adopt in compliance with these principles involves an effective and substantial change in mentality and organizational culture. In fact, they are invited to prepare the technically best tools useful for the purpose of protecting the safety of workers in relation to the risks determined by work-related stress. This approach - introduced in Italy, with regard to the obligations of safety in the workplace, precisely from the normative dictate referred to in Legislative Decree 81/08 - arises, moreover, on the same normative trail inaugurated by the Italian legislation with the Legislative Decree 231/01 on the liability of companies and entities for crimes committed during the course of corporate activities. The legislative ratio common to these two regulatory systems is inspired by the logic that the holder of the obligation of prevention must demonstrate that he or she has adopted the best organizational solutions to prevent (potential) sources of liability, through the adoption of a series of best practices, and, only in this way, can more easily make it possible to ascertain in any criminal or civil judgments their absence of responsibility with respect to facts deriving from situations of related work stress.

In light of the above, it is clear that a monitoring system based on new technologies, and therefore suitable to allow maximum coverage of the target of workers involved, is the most appropriate to ensure compliance with all the aforementioned regulatory systems and therefore safeguard the company with respect to the outcome of the judgments in which it is found to be involved.

The advantages, examined so far, of the monitoring of work-related stress carried out using telematic methods must however be related to the obligations normally subject to the activity of the psychologist. In fact, this activity is above all subject to the limits and obligations ordinarily imposed by Italian and European laws (meaning European regulations as such) and by deontological rules concerning the profession of psychologist; secondly, the peculiarity of the manner in which the activity is carried out requires the observance of more stringent recommendations, formulated, as regards Italy, in a special document drawn up by the National Board of Psychologists. With reference to the first profile - that is the necessary subjection of those monitoring work-stress related to the rules of law and normed ethics that regulate the profession of psychologist - it is necessary to pay attention first to the fact that the activities must necessarily be carried out by subjects that meet certain requirements. The assessment and monitoring of work-related stress, in fact, is a typical act of the profession of psychologist under the Italian Law (Law No. 56 of 1989): this activity will necessarily be reserved to those enrolled in the register of psychologists. Likewise, due to the enrollment in the register of psychologists, the typically related obligations will fall: the registration to ENPAP - that is, the social security fund provided for professional psychologists - as well as the

signing of a mandatory insurance policy to cover the civil responsibility in the exercise of the profession, provided by the law from the art. 3, paragraph 5, letter e) of the D.L. n.138 / 2011 and from the art. 5 of the

D.P.R. n.137 / 2012 and 44, paragraph 4-quarter of the D.L. 69/2013. The consequences of the violation of these obligations are significant: the exercise of the profession of psychologist (and here therefore, as far as it concerns, the activity of monitoring the stress of related work) in the absence of registration on the register involves first of all a possible criminal responsibility; failure to sign an insurance policy involves both a deontological offense (article 5, paragraph 2, D.P.R. 137/2012) and a violation of the law. Finally, failure to register with ENPAP involves a violation of the law for other profiles, with consequent pecuniary sanctions.

Observed therefore that the monitoring of work related stress can be performed only by qualified and registered psychologists, it is also obvious that the additional obligations and limitations typical of the profession of psychologist are also applied.

In the first place, both the Deontological Code of Italian Psychologists (Article 23) and some legal provisions (lastly, Law 124/2017) make it necessary for the psychologist to present a written estimate to their patients, before beginning of activities. Likewise, the same deontological rules (in particular, articles 9, 24 and 31) and especially the recent Law 219/2017 which introduced and definitively codified the obligation to submit to their patients informed consent, failing of which it is not possible to proceed to any therapeutic treatment, significantly affect the monitoring activities using telematic methods. The problem seems to be particularly relevant in relation to these activities, since it would seem necessary to take a written informed consent, as a result of what was suggested by some rulings by the Court of Cassation (above all, sent Court of Cassation, section III, 29.9.2015 No. 19212) and the provisions of the new Law 219/2017 already cited.

Secondly, especially in light of the changes introduced with the General Data Protection Regulation (GDPR, EU Reg. 2016/679) the monitoring of work related stress carried out remotely must have the same guarantees related to privacy of patients related to “conventional” activities. This principle, albeit with different national variations, will be common throughout the European Union. Therefore, as a general principle, it will be necessary to take all necessary measures to ensure that all the necessary precautions have been taken to reduce the at least the risks of possible breaches of confidentiality (Article 5 of the GDPR) especially in the event of disputes. Likewise, the sensitive data of subjects will be better protected: those conducting the assessment will have to adequately inform the person - through appropriate information - of the purposes for which the data are collected and any other purposes than those for which they were collected (Article 5.1 GDPR); the operator must obtain the consent from the person (articles 6-7 GDPR) and inform of all the rights in this regard (right of access by the data subject), rectification (right to rectification) and above all of cancellation, the so-called right to oblivion the “right to be forgotten” (articles 16-21 GDPR).

With regard to the methods of data processing, the principles established by the GDPR can also be highlighted in relation to the activity of remote psychological evaluation through technological tools, and in particular to the online monitoring activity: the use of “pseudonymisation” (Article 4.5, Article 32 of the GDPR), that means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organizational measures to ensure that the personal data are not attributed to an identified or identifiable natural person. The use of “data minimization” (Article 5.1.c GDPR), this means an adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

As it is possible to see, therefore, the activity of monitoring work related stress imposes on the

one hand that it is carried out by registered psychologists and on the other it does not exempt them from compliance with the rules applicable to the profession of psychologist and the relative ethical codes. This should however be lowered into reality and examined in the light of the peculiarities of the way in which this activity is carried out: the National Council of the Order of Psychologists, as seen, has published a special recommendation on remote psychological activity (Bozzaotra, 2017).

This document highlights a series of general issues related to the psychological intervention mediated by technology: skepticism (both by users and professionals), little knowledge of the technological possibilities and of their diffusion, and inadequate digital competencies. Most important, the document gives guidelines for the technology-mediated psychological practice:

Ethics 1) the ethical principles and the rules of the Code of Conduct apply also in cases where the performances are carried out with the support of remote communication technologies (see Article 1 of the Code of Conduct - Italian Board of Psychology). These principles and rules must be specified through documents on the website or on the platform of the professional who provides the service.

Adequacy 2) It is the responsibility of every psychologist, before starting an online intervention, to evaluate the adequacy of this tool based on the characteristics of the intervention and the subjects involved.

Competence 3) Psychologists should provide online services within the limits of their competence derived from their training, education, traineeship experience, or other professional experience, and should understand the limits and applications of different technologies. 4) The development of remote communication technologies allows psychological e-health interventions. Such application contexts, due to the complexity and specificity that characterizes them, require that the professional possesses the adequate technologies and particular skills in their use. 5) Psychologists will have to make their competences identifiable to customers, declaring their identity (for example, specifying a geographical position) and providing proof of their identity, including qualifications, experience on the subject (including experience in providing online services) and membership in any register and any competent corporate bodies, and guide the client on how/where they can verify this information; psychologists' websites should also transmit this information in a professional, grammatically correct and non-jargon manner. 6) Psychologists will have to take responsibility for continuously evaluating their skills in this area. 7) The psychologist who offers services via the internet communicates to his/her Regional Board the web address at which he performs this activity, the type of software instrumentation and the type of media used.

Legal Aspects 8) Psychologists will need to know and comply with all laws and regulations when providing online customer services crossing jurisdictional and/or international borders, including determining whether online psychological intervention is permitted or if restrictions apply. 9) For the custody of data and information, the rules established by current legislation apply. 10) Psychologists will have to explain to users that their qualification allows the provision of online services.

Confidentiality 11) psychologists must (through their constant training) take all precautions (for example, computer security measures) to protect and maintain the confidentiality of data and information related to their customers, as well as inform them about the precautions taken, even about the potential increase in privacy risks, inherent in the different technologies used (for example, email vs videoconferences) as well as the limits that each mode offers to confidentiality. 12) The psychologist who uses electronic technologies for distance communication is required to use hardware and software systems that provide efficient data protection systems.

Consent 13) Psychologists must obtain and accurately document informed consent, as far as possible, in accordance with all relevant laws and regulations. 14) consent for e-mental health serv-

ices must address the key issues related to technology, as well as the process of intervention, including: privacy and confidentiality, structure and duration (timing) of services provided; potential risks, the limitations of the respective means of communication used and for which the service will/can be provided online, taxes, security measures taken, reliability of the online connection, technological equipment and skills, limits on communication and the possibility for misunderstandings that might occur, the keeping of records (how and where personal information will be recorded and stored and who will have access to it), risk management strategies, availability (time and manner to be contacted), participation/deadline rules and cancellation policies, as well as alternatives to online psychological intervention.

Crisis Management 15) Psychologists should provide references to clinical facilities in the geographic location of the client in the event of an emergency, before starting the online intervention.

DISCUSSION

The analysis of ethical, deontological, legal and practical issues related with the implementation of technology in active listening for monitoring work-related stress shows the complexity of this topic when it comes to its concrete application in organizations. Italian and European laws are often in the condition of not being able to follow the pace of technology and they struggle to norm forms of intervention that are still quite unpredictable. The effort of legislative bodies is undeniable, as is the widespread awareness of the increased risks that accompany technological evolution, alongside the possibilities of doing a better job in promoting and protecting health and well-being.

The observation of the guidelines by the National Board of Psychologists also show how many concrete issues arise when a practice such as the psychological one is mediated by technology.

The complexity of the evolution of psychological practice and the difficulty of the norms to keep up with the pace of technology give a great responsibility to each professional, strengthening the importance of an accurate training and a deep knowledge and adhesion to shared and codified ethical principles.

CONCLUSIONS

More efficient ways of psychological interventions are surely desirable, especially in relation to their effectiveness and the extended possibility of impacting positively on people's lives. Today, the evolution of psychology is strongly related with technology, also in the field of active listening for work-related stress monitoring. This enhanced efficacy, reached using technology, involves a very complex set of issues that are still far from being solved. Implementing systems for active listening though technology can mean obligations for the professionals that are difficult to interpret and to comply with. The particular situation of Europe, in which European regulations are interpreted by every state, makes the concrete operations even more complicated, especially in the case of organizations operating in more than one European country. The risks are high, as many infractions involve serious judgements and practical difficulties make the usage of technology in this field even more difficult. But the improvement of the professional practice and the greater possibilities counterbalance this series of issues, therefore there must be a strong activity of divulgation of the new possibilities and of the best practices in order to have more and more professionals ready to implement them. At the same time, it is fundamental to push for a more harmonic regulation across European countries and for an orientation by the European Union and by its Member States more favorable to the introduction of new technological possibilities. One more consideration can be made on the relevance of the single professional in this era: with the increase in the number of possibilities, every single professional is more alone than before. The choices are too many and the regulations are often obscure or out of date. Therefore, the ethical codes are and will be even more rele-

vant in guiding the professionals in their interventions and establishing them as a particularly reliable source of health and performance for organizations.

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