



**FAQ FOR THE NATA AND APTA JOINT STATEMENT ON COOPERATION:
AN INTERPRETATION OF THE STATEMENT
September 24, 2009**

Introduction

The NATA considers the “Joint Statement on Cooperation” a very positive resolution to the settlement to its Fair Practice Lawsuit against the APTA. NATA believes that its members and, in fact, all athletic trainers will eventually benefit from better professional opportunities and improved working conditions in the marketplace. NATA believes that mutual respect, ethical behavior and truthful, accurate information on educational and skill qualifications of athletic trainers will benefit both professions in their day-to-day working relationships. Similarly, clinic, hospital and physician employers, public and private insurers, state and federal legislators and regulators, patients and other stakeholders will benefit from the truthful and accurate portrayal of athletic trainers’ education, skills, qualifications and knowledge.

It is NATA’s intention to work cooperatively with the APTA on issues of patient safety and care, and other areas of mutual interest. NATA will, however, remain vigilant in ensuring that its members can continue to take all continuing education classes for which they are qualified, specifically applicable manual therapy courses. NATA will continue to protect the rights of its members to practice to the fullest extent of their scope of practice.

How to read this document

This FAQ provides an interpretation of the “NATA and APTA Joint Statement of Cooperation,” which was signed by mutual agreement on Sept. 21, 2009. The Joint Statement was entered as part of the settlement of NATA’s Fair Practice Lawsuit against the APTA. The lawsuit addressed NATA’s complaints of ongoing antitrust violations by the APTA, both broadly and historically, and as specifically relates to manual therapy. The FAQ follows the order of the Joint Statement. Words, sentences and paragraphs in quotes are taken directly from the Joint Statement. NATA interpretation and analysis is noted in bold.

“The Associations” Section

This section provides general information about the missions of both NATA and APTA and directs readers to their respective Web sites for additional details.

“The Litigation” Section

This section outlines the Fair Practice Lawsuit, brought by NATA in February 2008 on behalf of its members. NATA filed the lawsuit because it believed that the APTA had violated antitrust laws. A Dallas Federal District Court found the case had merit to proceed. With the lawsuit, NATA sought a permanent change to this undesirable and illegal behavior, though the APTA denies any factual basis for the allegations. While the APTA has stated it will continue

to be an aggressive competitor in the marketplace, the APTA is now compelled to compete honestly and ethically. Foremost, the APTA has agreed to compete using truthful and accurate statements if and when addressing the qualifications of athletic trainers. NATA is committed to its role of watchdog in ensuring fair play in the therapy marketplace and advocacy.

“Qualifications of Physical Therapists and Athletic Trainers” Section

1. “The APTA and the NATA acknowledge that physical therapists and athletic trainers are health care professionals authorized to provide interventions within their scope of practice as defined by applicable state law and, within that scope, to the extent of their individual educational/training competencies.”
The important part of this sentence is that the APTA acknowledges that athletic trainers are health care professionals, something it has never done before.
2. “The scopes of practice of the two professions overlap to some extent.”
In this sentence, the APTA concedes that there are similarities in the scopes of practices of the two professions and that there is some overlap. PTs can no longer claim exclusivity in providing therapy and, specifically, manual therapy. The statement means that ATs are qualified to provide therapy, as defined by the American Medical Association’s CPT codes.
3. “The education, qualifications and training of the two professions are different. The patients and conditions treated and interventions performed by PTs and ATs are often different. The professional education of both physical therapists and athletic trainers calls for competence in some forms of manual therapy, on which physical therapists and athletic trainers are tested by their certification/licensure examinations.”
Both associations agree that there are differences in the two professions, and how ATs and PTs treat patients. However, both are qualified to use manual therapy as a treatment. Note that patients are not limited to a specific group of people. Note that ATs may not be qualified in all forms of manual therapy.

“Non-Exclusive Procedures” Section

4. “The APTA’s long-standing position is that the term “physical therapy” should be used to characterize health care services only when those services are provided by a licensed PT or by a PTA acting under the direction and supervision of a licensed PT. The NATA recognizes that CPT codes 97001 and 97002 (physical therapy evaluation and physical therapy re-evaluation) are used to denote services provided by a licensed PT.
The NATA’s position is that the term “athletic training” should be used to characterize health care services only when those services are provided by a licensed and/or certified athletic trainer. The APTA recognizes that CPT codes 97005 and 97006 (athletic training evaluation and athletic training re-evaluation) are used to denote services provided by a licensed and/or certified AT.

The NATA and the APTA both believe that the current Physical Medicine and Rehabilitation codes other than 97001, 97002, 97005 and 97006 are not exclusive to any one particular health care profession.”

Both associations agree to the other’s definition of their professional practice and how each is defined, in this case, by the American Medical Association’s CPT Code Manual. This section also corrects long-standing and widespread misinformation within the physical therapy profession that the PMR codes were for exclusive use by physical therapists.

5. “PTs are not the “exclusive” providers of manual therapy. Further, depending on individual qualifications and certification and state regulations, ATs are qualified to perform certain forms of manual therapy.”
This section explains that ATs are qualified to perform manual therapy to the limits of their education and state regulations. Not all forms of manual therapy are currently taught in entry-level AT programs, hence the need for continuing education.

“Legal Scope of Practice” Section

6. “The APTA and the NATA agree their members should practice within their respective licensed or regulated scopes of practice. The NATA and the APTA agree that the appropriate legal scope of practice for their respective members, as for any profession, is determined by legislatures and regulatory bodies. Both NATA and APTA agree it is a priority to protect the public from harm, and to compete ethically in the marketplace.”
The important part of this section is that the APTA agrees to adhere to its own code of ethics. In its old and newly proposed code of ethics, APTA members are ordered to perform their duties with professional integrity. PTs are required to respect the qualifications and abilities of other health care professionals. The APTA code of ethics calls for truthful, accurate statements and representations.

“Access to Continuing Education” Section

7. “With respect to continuing education programs offered by PTs or PTAs, the APTA has agreed to **clarify its existing policy on continuing clinical education for non-PTs** (*emphasis added*). The policy adopted by the APTA House of Delegates applies only to PTs and PTAs and says that they should identify the target audiences for continuing education programs and that course materials should indicate course content is not intended for use by participants outside the scope of their license or regulation. The policy also says that, in order to protect the public, physical therapists should not teach elements of physical therapy patient/client management to “individuals who are not licensed or otherwise regulated.”

Because athletic trainers in the vast majority of states are licensed or otherwise regulated, this part of the policy does not apply to teaching ATs in those states where they are licensed or otherwise regulated (emphasis added). The House of Delegates policy does not require PTs to make determinations concerning the scope of practice of individuals who practice other professions.

The APTA and several APTA Chapters are continuing education providers approved by the National Athletic Trainers' Association Board of Certification, Inc. ("BOC"). The Associations agree that PTs and ATs are free to refrain from teaching certain content to any audience if they determine that the content is not appropriate for the audience, including, but not limited to, because someone lacks the requisite education and training."

***Related to the italicized sentence above:* NATA believes that the APTA spread misinformation to state legislators and regulators that "unlicensed" meant healthcare professionals who were not PTs or PTAs. This paragraph notes that the APTA policy does not pertain to athletic trainers because ATs are licensed or regulated in 47 states. This statement specifically relates to the fact that ATs are qualified to perform manual therapy and therefore are qualified to take additional continuing education courses on the subject. APTA policies, just like state regulations, only pertain to PTs and PTAs; these policies and regulations extend to or affect athletic trainers or their practice. However, neither the NATA nor the APTA can prevent private companies from barring one group or the other from accessing continuing education.**

"The Professions" Section

8. **This section details for both NATA and APTA the professional qualifications, academic qualifications and accreditation, certification requirements, continuing education requirements, licensure status and a general statement on scopes of practice.**

"Truth in Advocacy" Section

9. *"The NATA and the APTA agree that decisions about which professionals should be deemed qualified to provide particular services and which services provided by such professionals should be reimbursed by insurers and public programs are issues to be decided in the marketplace by consumers, insurers, federal and state legislatures, policy makers, and, in the case of athletic trainers (as dictated by state law), physicians (emphasis added)."*
This sentence is important because the APTA acknowledges that it is not the decision maker on therapy services – nor the exclusive provider of therapy services – and that the others listed are free to make their own decisions regarding choice of healthcare professionals, and reimbursement and public policies.
10. "Thus, each Association and its individual members are free, like other citizens, to make truthful statements and to express their opinions about their professions or about others within the health care marketplace. That being said, statements made by the APTA and the NATA about PTs and ATs should not mislead consumers, insurers, physicians, or the public, and neither organization will make false or deceptive statements, including false or deceptive statements about qualifications of PTs or ATs."

NATA believes this statement will limit the spread of misinformation about the qualifications and capabilities of ATs. The APTA has agreed to act in an ethical, truthful manner in the marketplace. However, all speech is considered free speech in the context of advocacy and lobbying to state and federal legislatures. This advocacy free speech is protected by the Noerr-Pennington doctrine. From Wikipedia:

“Under the *Noerr-Pennington* doctrine, private entities are immune from liability under the antitrust laws for attempts to influence the passage or enforcement of laws, even if the laws they advocate for would have anticompetitive effects. The doctrine is grounded in the First Amendment protection of political speech, and "upon recognition that the antitrust laws, 'tailored as they are for the business world, are not at all appropriate for application in the political arena.'”

NATA members should understand that despite this positive and favorable settlement, it won't solve all ills in the political arenas and marketplace. NATA and members will still need to aggressively and persistently advocate for fair treatment as qualified health care professionals.

11. “Specifically, neither organization will make false or misleading statements referring to PTs or ATs as “non-qualified,” “unqualified,” “not qualified,” or any variation of these terms.
As part of its misinformation campaign, the APTA frequently and inaccurately uses these terms in its letters advocating against H.R. 1137, the Athletic Trainers Equal Access to Medicare (ATEAM) Act, and at the state legislative and regulatory level. While Noerr-Pennington protects APTA’s right to use these terms in lobbying, NATA will aggressively pursue and correct violations of this Joint Statement. This will be done by using the Joint Statement as a counterpoint to any misinformation APTA sends out, including noting that APTA has signed the Joint Statement and has it posted on its website.

NATA members should know that the term “unqualified” as used by the Centers for Medicare and Medicaid Services (CMS) means “not reimbursable.” CMS does not use the word to address or refer to skills, knowledge or capabilities of any healthcare professional.

12. “Nothing in this Joint Statement shall be construed to impede the rights of either the APTA or the NATA to conduct all lawful activities, and make all lawful statements. Members and representatives of the APTA and the NATA should respect the rights, knowledge and skills of the other profession and compete honestly and ethically in the health care marketplace.”

This portion refers to Noerr-Pennington but reiterates the APTA’s agreement to compete ethically in the marketplace.

“Mutual Cooperation” and “Inter-Association Communication” Sections

In summary, these sections agree to a good faith effort by both associations to establish productive, collaborative relationships, and discuss areas of friction, as the need arises. This will happen at the national level. Both groups hope to achieve improvements in services provided to patients and clients.