



**October 8, 2009**

## **An Open Letter to NATA Members and Their Employers and Patients**

In the days following the Sept. 23, 2009 settlement of the Fair Practice lawsuit, you may have seen statements on the APTA Web site that seem to contradict the Joint Statement on Cooperation and NATA's positions. Listed below are APTA's FAQs about the settlement with NATA's responses to each one. It appears APTA does not like the settlement it entered into and is trying to "spin" it. NATA suggests that the terms of the Joint Statement are clear and it speaks for itself. Nevertheless, NATA wants its members and others to have the benefit of the responses below so you can be fully informed.

What APTA Said:

1. Isn't APTA's agreeing to issue the Joint Statement an admission that the NATA lawsuit had some merit?

*No. NATA's complaint was wholly without merit. APTA agreed to settle the case only in order to put this matter behind us and return our full attention to our true purpose - serving our members and achieving APTA's goals as laid out in our strategic plan.*

### **NATA Response:**

**What APTA thinks of NATA's lawsuit is irrelevant. The fact is that the Federal Court in Dallas denied APTA's motion to dismiss and found that NATA properly stated claims of wrongdoing against APTA. The initial settlement discussions between NATA and APTA followed shortly after the Court issued its lengthy Order denying APTA's motion to dismiss in September 2008. The fact that NATA defeated APTA's motion to dismiss is particularly important in an antitrust case. NATA's case had merit, and the Court agreed.**

What APTA Said:

2. Does the Joint Statement say that athletic trainers are qualified to do all kinds of manual therapy?

*No. The Joint Statement says that athletic trainers "are qualified to perform certain forms of manual therapy." That statement is true. In Arizona, Delaware, Massachusetts, and Pennsylvania the athletic trainers' practice act places "massage" within the scope of athletic training, and in Connecticut the statute mentions "light massage."*

### **NATA Response:**

**The APTA is implying that ATs' qualifications and ability to perform manual therapy is limited four states and further limited to massage. Nothing is further from the truth since almost all of the 47 states that regulate ATs do not address the specifics of manual**

therapy. NATA never suggested ATs are qualified to perform all kinds of manual therapy, so APTA's point here is a big "so what." Prior to the lawsuit, APTA denied ATs are qualified to perform any kind of manual therapy. Through the lawsuit and the Joint Statement, APTA acknowledged ATs are qualified to perform certain forms of manual therapy. Importantly, APTA acknowledges in the Joint Statement that PTs are "not the 'exclusive' providers of manual therapy." It was APTA's incorrect claim that PTs were the exclusive providers of manual therapy that instigated the suit by NATA.

What APTA Said:

3. Does the Joint Statement mean that APTA chapters may not oppose state legislation that would allow athletic trainers to treat non-athletes?

*No. The Joint Statement explicitly recognizes the right of APTA to "conduct all lawful activities, and make all lawful statements" and the right of APTA and its members to express their opinions "about others." APTA will continue to advocate forcefully and effectively to protect the interests of its members and the public.*

### **NATA Response:**

**NATA has never sought to curb advocacy, though it prefers truthful advocacy. APTA has agreed not to make false and misleading statements about ATs, which is key. The Joint Statement will show all interested individuals, including lawmakers, the many key points that APTA acknowledges, which is a key aspect of the Joint Statement.**

What APTA Said:

4. Under the heading "The Professions" didn't APTA agree to numerous statements about athletic trainers, including the claim they "serve patients through injury and illness prevention, clinical evaluation and diagnosis, appropriate interventions, management, and treatment of emergency, acute and chronic medical conditions and rehabilitation?"

*No. The section headed "The Professions" is what NATA says about its members, not what APTA says. Note that the section has two bullets. The one describing athletic trainers begins, "NATA states," and the one describing physical therapists begins, "APTA states."*

### **NATA Response:**

**APTA is disingenuous here. Note that APTA President Scott Ward signed the Joint statement. If APTA did not agree to the language, then why did its President sign the statement?**

What APTA Said:

5. Does the Joint Statement mean that physical therapists who offer a continuing education course teaching joint mobilization must allow athletic trainers to take the course?

*No. In the Joint Statement both organizations agree that physical therapists “are free to refrain from teaching certain content to any audience if they determine that the content is not appropriate for the audience.”*

**NATA Response:**

**The Joint Statement says that “Because athletic trainers in the vast majority of states are licensed or otherwise regulated, [the APTA’s existing policy on continuing clinical education for non-PTs] does not apply to teaching ATs in those states where they are licensed or otherwise regulated.” The actual text of the Joint Statement provides the actual context and shows APTA’s point above is incomplete and misleading: “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.”**

What APTA Said:

6. The Joint Statement says that APTA should not make false or deceptive statements, including false or deceptive statements about qualifications of athletic trainers. Doesn’t this statement hamper APTA’s ability to advocate vigorously, in particular with regard to matters affecting athletic trainers?

*No. APTA does not make false or deceptive statements in our advocacy. APTA will continue to advocate on behalf of physical therapists, physical therapist assistants, and their patients.*

**NATA Response:**

**APTA has repeatedly made false statements about ATs in its advocacy efforts. The Joint Statement provides APTA’s agreement to change its misleading ways: “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. 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. 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.”**

What APTA Said:

7. Did APTA pay NATA any money to settle the lawsuit?

No.

**NATA Response:**

**So what? The NATA's lawsuit was not about money; it was about ensuring the right for ATs to practice fairly and consistent with their qualifications, education and licensure. It was designed to get APTA to stop its anticompetitive behavior and the Joint Statement, signed by APTA's President, does that.**

What APTA Said:

8. If the NATA lawsuit was wholly without merit, why did APTA agree to settle instead of litigating all the way to the Supreme Court if necessary?

*If the only choice had been to enter into a dishonorable settlement agreement, then APTA would have continued to fight the lawsuit, regardless of the cost. However, it is important to note that nothing has changed as a result of this agreement. There are no winners here. The settlement acknowledges a few indisputable truths concerning what physical therapists and athletic trainers do. APTA will continue as before to advocate on behalf of the profession and those it serves. Litigating any lawsuit, even one that is meritless, has many costs. The legal expenses are only the most obvious. Defending this lawsuit would have taken up very significant amounts of APTA staff time. The burden would not have been limited to just the legal department, since staff members in many other areas (including practice and education, professional development, government and payment advocacy, federal government affairs, and state government affairs) could have been torn away from their APTA work. Far too many hours would have been spent by APTA staff to help defend the case, and APTA leaders would have been spending their time preparing for and giving depositions instead of working to advance Vision 2020 and to carry out our strategic plan. At the same time, the two associations have committed to confer on issues of common interest and to discuss disputes between the professions.*

**NATA Response:**

**Fair Practice is the winner here. ATs win because the settlement and the Joint Statement goes along way toward ensuring that APTA compete fairly in the marketplace. The lawsuit settlement was a huge achievement for ATs and for NATA. APTA is much bigger and has more financial resources than NATA. It is the big association. APTA presumably chose to settle because the alternative to settlement would have been bad for APTA. The lawsuit had merit and the terms of the Joint Statement show that. Things have and will change for the better for fair practice and ATs as a result of the settlement.**

Re: The Fair Practice Lawsuit (National Athletic Trainers' Association v. American Physical Therapy Association) for more information, contact Cate Brennan Lisak, Director of Strategic Activities, NATA, 972.532.8848 or [catel@nata.org](mailto:catel@nata.org) | [www.NATA.org](http://www.NATA.org)