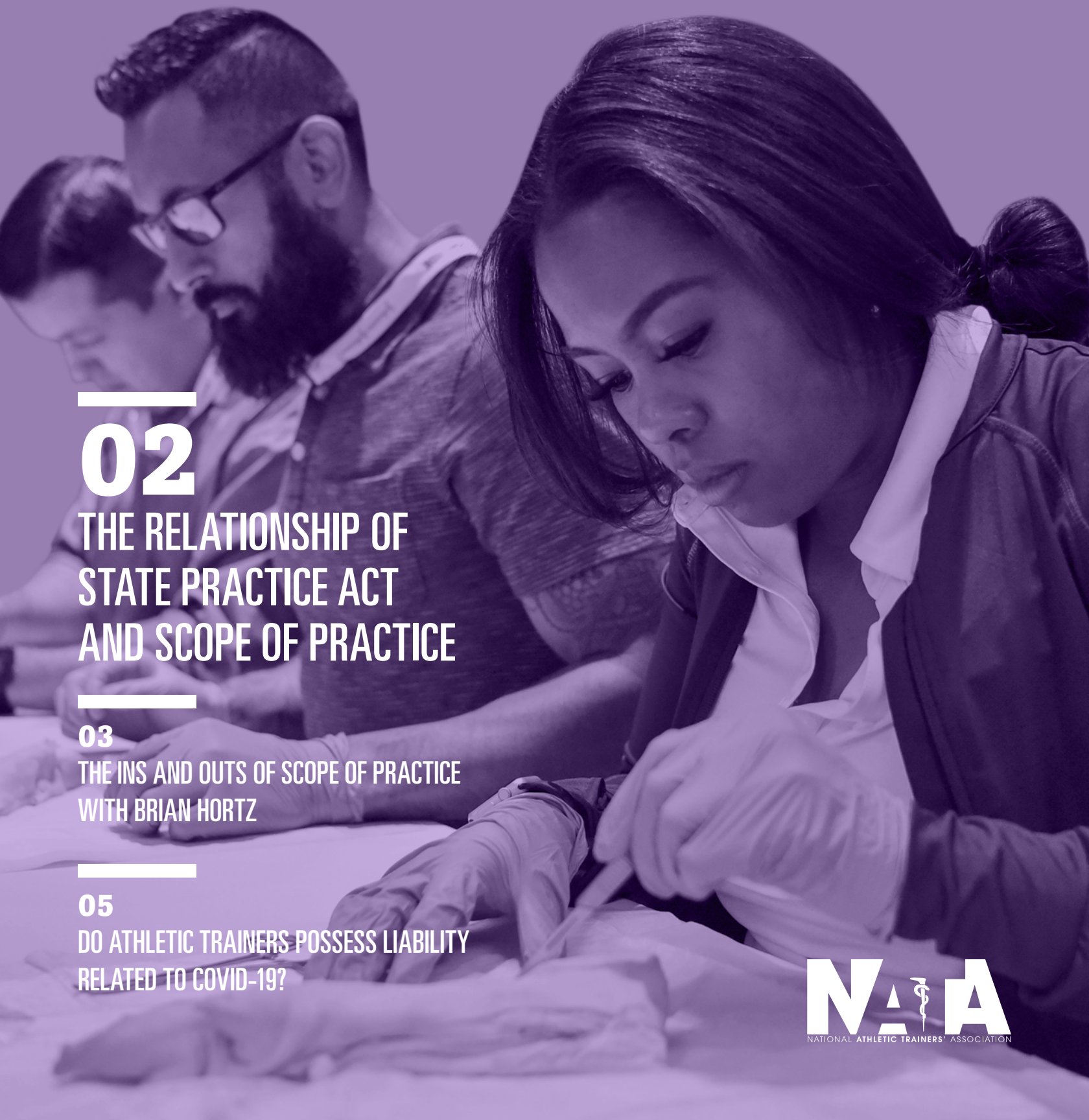
SPORTS MEDICINE

LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

FALL 2020



NATIONAL ATHLETIC TRAINERS' ASSOCIATION

IN THIS ISSUE

FEATURES

CASE SUMMARIES & LEGAL COMMENTARY

Q&A

REVIEWED BY

The content included in this issue was reviewed by the NATA Editorial Advisors, Pat Aronson, PhD, ATC; Scott Cheatham, DPT, PhD, ATC; A.J. Duffy III, MS, AT, PT; Michael Goldenberg, MS, ATC, CES; Eric McDonnell, MEd, ATC, LAT; Tim Weston, MEd, ATC; and Cari Wood, ATC; and the NATA Professional Responsibility in Athletic Training Committee.

The Relationship of State Practice Act and Scope of Practice

State practice act trumps scope of practice, but it's on ATs to know both before practicing advanced skills

BY CLAIRE HIGGINS

Athletic trainers in states that require licensing or certification to treat patients follow the guidance of two sets of rules and regulations: one legal (state practice act) and one more personal (scope of practice). Knowing both inside and out, backward and forward, how they work together and what's in one but not the other is important for athletic trainers to legally and safely provide care.

A state practice act varies from state to state, is set by the state legislature and takes precedence over the other, but can be too vague or too specific and is slow to make amendments that account for evolving education, training and athletic training skills. Scope of practice is a more malleable and personal reflection of an athletic trainer's current education, training and skills, often approved by a supervising physician or state regulatory board.

As athletic trainers expand their training to include advanced skills throughout their careers, such as dry needling, suturing, injections and mobilization, understanding if it is legal under their state practice act and how to properly document adequate training in their scope of practice is critical to minimizing legal risk when providing care to patients.

"Your state practice act dictates your scope of practice," said Ciara Ashworth, ATC, District Ten representative on the NATA Professional Responsibility in Athletic Training Committee (PRAT).

Ashworth said she advocates for newly certified or licensed athletic trainers to understand exactly what their state practice acts entail, and what skills included in their scope of practice are legal.

"We might have our own experience or our own understanding [of certain practice act components], but we have to take the responsibility to find out the facts," she said, referencing each AT's responsibility to read and review state practice acts and ask questions to their state associations, regulatory board or directly to the state department of health for any clarification.

Because a state practice act, in most states, outlines what treatment athletic trainers can provide in their scope of practice, Ashworth recommends reviewing state practice acts for five components:

- How patient and workspaces are defined
- What advanced skills are outlined or excluded
- If standing orders are required
- Title protection regarding other health care providers
- How athletic trainers can provide concussion care

These, she said, can most often change from state to state, so any athletic trainers practicing in or moving to new states will need to review their practice act to understand what is legally approved in their scope of practice before treating patients.

By reviewing how patients and workspaces are defined, athletic trainers can identify their legal patient population, whether that is specified as "athlete" or "student athlete," like in many state practice acts, or as simply "patient," which provides more freedom to practice with other patient populations. Workspaces or facilities may also be defined by "arena" or "game field," which can limit where athletic trainers in some states can treat patients legally.

Advanced skills, such as dry needling or suturing, are not commonly defined, included or prohibited in state practice acts. Understanding the language around "puncturing skin" or the depth to which an athletic trainer can execute an injection can exclude advanced skills that are now more typical in professional education. For example, although a newly certified athletic trainer may be trained in dry needling because it was included in their educational program, if their state practice act does not allow the use of needles, they are not legally able to practice dry needling on patients in their state.

These advanced skills are increasingly common in newly certified athletic trainers' education curriculum; therefore, any advanced skills are included in a new AT's scope of practice. More established ATs can also complete training in advanced skills and add additional skills to their own scopes of practice.

Brian Hortz, PhD, ATC, authored the NATA Scope of Practice: Factors to Consider document for athletic trainers in 2017 to reference when considering what is included within their scope of practice. Although there is no one scope of practice, this document recommends athletic trainers always consider entry-level practice, continuing education practice, state regulation and public protection when defining their scope of practice.

When adding an advanced skill to scope of practice, Hortz said athletic trainers can take some steps to appropriately document that training in their scope, if it is not prohibited by their state practice act. Those include:

- Complete adequate education, training and practice hours.
- Receive documentation of adequate training from a supervising physician, who can confirm the amount of training completed and determine if it can be included in the athletic trainer's scope.
- Obtain personal liability insurance that covers that advanced skill. Practicing advanced skills come with increased risk because of potentially negligent practice, and ensuring liability insurance covers that specific skill will provide ATs with more legal protection.

Some states do specify the number of adequate hours required to legally practice advanced skills, such as dry needling, but others do not. For ATs in states that don't specify the number of hours required, Hortz recommends connecting with the state regulatory board to determine what defines adequate education and training for advanced skills.

"ATs need to be really smart about understanding what they're trained to do and what the boundaries of their scope are," he said, adding that being in close contact with the BOC and state board is smart when practicing advanced skills or expanding scope.

"If you're doing advanced practice skills, you need to be connected to the board. You need to be proactively communicating with them all the time about your practice and making sure that you're kosher with the practice of your physician and the [state] board."

Eric McDonnell, MEd, LAT, ATC, federal legislative affairs liaison to PRAT, former District Five director and former NATA Government Affairs Committee chair, agreed. He specified athletic trainers, for example, working at a secondary school may not have a supervising physician comfortable with approving advanced

continued on page 04

Q&A

THE INS AND OUTS OF SCOPE OF PRACTICE WITH BRIAN HORTZ

What does scope of practice mean to athletic trainers? *Sports Medicine Legal Digest* posed this and other questions to Brian Hortz, PhD, ATC, director of research and education at Structure & Function Education, a health care education company. A former member of the Ohio Athletic Training Licensing Board, former president, secretary and enforcement liaison for the joint and athletic training boards, Hortz authored the Scope of Practice: Factors to Consider document published by NATA on identifying the AT scope of practice.

Q. What does "scope of practice" mean in the athletic trainer space?

"Scope of practice" is defined as the activities that an individual health care practitioner is permitted to perform within a specific profession. Those activities should be based on appropriate education, training and experience. Scope of practice is established by the practice act of the specific practitioner's board and the rules adopted pursuant to that act. In short, scope of practice is a way of defining the knowledge and skills an individual athletic trainer has. No two athletic trainers have the exact same scope of practice.

Q. What sort of overlap arises between ATs and those in other related professions?

Health care practitioners include, but may not be limited to, acupuncturists, nurses, chiropractors, occupational therapists and physical therapists, who all have important roles in providing health care and some skills and knowledge that overlap with athletic training. Some practitioners are authorized to practice independently within their scope of practice and others are required to work under the supervision of, or in collaboration

continued on page 04

Q&A, *continued from page 03*

All medical practice involves many professions with varied degrees of overlap in skills and autonomy. EMTs overlap with many of the emergency management skills that athletic trainers have. Physical therapists and physical therapy assistants have some overlapping rehabilitation skills and knowledge with athletic trainers. When a profession believes that it owns a skill or tool, it really creates problems and turf battles over that skill.

All of the professions listed above may use a stethoscope or a blood pressure cuff, and different professionals frequently use the same tools. In today's medical delivery model, no one profession actually owns a skill or activity in and of itself.

Furthermore, health care education and practice has developed in such a way that most professions today share some procedures, tools or interventions with other regulated professions. It is unreasonable to expect any one profession to have exclusive domain over an intervention, tool or modality.

Q. What role can scope of practice play in lawsuits brought against ATs?

Scope of practice is usually directed to the regulatory board for that profession, and decisions of scope are made there. If it is found someone is outside of scope, they tend to lose their license to practice, either revocation or suspension. This is why I wrote the document I did so to provide state boards with a framework for making those decisions.

However, scope of practice is tied tangentially to negligence cases. You can practice within your scope and practice negligently. Additionally, if an individual athletic trainer's scope doesn't include an advanced skill, negligent practice is bound to happen as most of these skills are higher risk. Or if the athletic trainer doesn't follow standard practices and physician orders, then they would be part of a negligence lawsuit. There are plenty of examples of this. Usually the athletic trainer and the physician are involved in these suits when care was not provided to the standard of the field.

Q. How do regulatory boards decide questions on scope for ATs?

Every regulatory board decides scope of practice issues within the professions they regulate. Additionally, each state may decide matters differently. Athletic trainers need to understand the rules in the state they live in and how the board defines their scope. My publication as well as others, such as the Federation of State Medical Boards' Assessing Scope of Practice in Health Care Delivery: Critical Questions in Assuring Public Access and Safety document, attempt to provide state boards with a framework to make decisions.

Q. How can one determine whether an AT is educationally qualified to perform a certain task?

This was the point of my article. The practitioner's scope of practice in athletic training is determined by several factors, including (A) entry-level practice; (B) continuing education or advanced qualification in a skill; (C) state regulation; and (D) public protection. Boards ultimately have the responsibility to protect the public. In order to do that, they need to evaluate whether the skill in question provides for the public safety, so each of these pieces is important.

continued on page 05

STATE PRACTICE ACT & SCOPE OF PRACTICE, *continued from page 03*

skills in scope of practice, so providing documentation to the state board would be an appropriate way athletic trainers can ensure they are covered legally to practice those skills.

Legislation that makes up state practice acts can be slower to make amendments based on education, trends in the athletic training profession or evolving advanced skills, but state rules and regulations committees can move quicker to determine if athletic trainers can practice certain skills legally, McDonnell said.

"The nice thing is, with legislation, even though it might be behind … you can work with the [rules and regulations committee] faster because it's usually a group of athletic trainers and [a legislative member]," he said.

Ashworth, Hortz and McDonnell all recommended athletic trainers obtain personal liability insurance to practice advanced skills approved within state practice acts because an employer's coverage or supervising physician coverage may not include specific skills.

It's also important, Hortz and McDonnell reiterated, to maintain and display documentation that approves practicing advanced skills, both within the athletic training facility and to have on-hand should liability lawsuits arise.

Because there is no single scope of practice or identical state practice acts from state to state, athletic trainers should be diligent in reviewing state practice acts at least annually and keeping their scope of practice documentation up to date consistently.

Connect with the NATA State Association Advisory Committee, state associations, PRAT and the BOC to answer questions regarding state practice acts and personal scopes of practice. State department of health websites or the state rules and regulations or advisory boards overseeing state practice act legislation are also great resources for athletic trainers to familiarize themselves with, especially when considering or expanding their scope of practice to include advanced skills.

Hortz' document, accessible at **www.nata.org/practice-patient-care/revenue-reimbursement/billing-reimbursement**, is an additional resource for athletic trainers to better define and understand their scope of practice and how to safely add advanced skills based on referrals from a supervising physician or state board and adequate education and training.

NATA provides a directory of state regulatory boards, contact information and links to each state's state practice act and statutes. Learn more at **members.nata.org/gov/state/regulatory-boards/map.cfm**.

NATA provides resources for athletic trainers interested in learning more about employment, unemployment benefits and labor laws through the NATA Government Affairs Committee. You can also learn more by visiting **www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx**.

COLUMN

Do Athletic Trainers Possess Liability Related to COVID-19?

Recognizing potential liability, how to mitigate risk during these unprecedented times

BY JEFF G. KONIN, PHD, ATC, PT, FACSM, FNATA, AND TIM NEAL, MS, AT, ATC, CCISM, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Sports have been a safe haven from world tragedies and challenges. Even the Sept. 11, 2001, terrorist attacks only stopped sports for one week. The uncertainty of an event was quickly followed by steps to address the aftermath and return some semblance of normalcy back to the world and sports. Athletic trainers employed in various settings have felt the impact of past events. For example, carrying certain medical supplies on the road and passing through airport screenings have been permanently changed from pre-Sept. 11, 2001, practices.

The past several months, though, have placed the world in an extremely uncertain place surrounding the COVID-19 pandemic. Athletic trainers, like other professionals, have had to pivot from what were previously considered normal ways of living and working circumstances. Some athletic trainers have maintained employment and adjusted accordingly; others have been placed in modified, furloughed or even laid off employment situations. As we actively navigate through these difficult and unprecedented times, athletic trainers play key roles in return to sport, return to the classroom and the health care of many patients, students and workers. The goal of this PRAT column is to recognize any potential liability that an athletic trainer could face in a COVID-19 world.

As we actively navigate through these difficult and unprecedented times, athletic trainers play key roles in return to sport, return to the classroom and the health care of many patients, students and workers.

Of most importance is to recognize that the existing COVID-19 environment should be addressed no different than how an athletic trainer would manage any other clinical condition – that is to follow current best practices and acceptable standards of care in one's geographical setting given that each state has a unique set of guidelines. Remember, each athletic trainer is ultimately judged according to how other athletic trainers would act in a similar situation under similar circumstances.

At the time of publication, a process known as "contact tracing" is actively being used to slow the spread of COVID-19. Contact tracing involves identifying people who have tested positive for the virus and subsequently tracking all of those who have recently come in contact with the positively tested individual. This process allows those who have tested positive to inform others with whom they have come in contact with for the purposes of quarantine considerations. Additionally, it allows individuals to potentially trace with whom and where they may have come in contact with someone carrying and, thus, possibly transmitting the virus to them.

While unknown to date, there is a possibility that athletic trainers and others may be named in a malpractice suit if a claim is made by an individual who has experienced damages in the form of their health and if their claim is that COVID-19 was transmitted to them in an environment where an athletic trainer was in part or fully responsible for adhering to COVID-19 guidelines in order to minimize and/or prevent transmission, but failed to do so. As with any other claim that is filed, once named, an individual needs to be prepared to defend oneself regardless of how they perceive the accusation.

continued on page 06

Q&A, *continued from page 04*

Q. You've written that the scope of practice in athletic training is determined by several factors. On entry-level practice, what are the critical issues?

Entry-level practice is fairly easy to define and, therefore, all of those who were educated and passed the entry-level exam are typically at least minimally competent in that knowledge and skills. The BOC uses an iterative process through role delineation and practice analysis to build a blueprint for testing entry-level content. So those documents are important. Additionally, accredited programs need to meet standards and teach a set of competencies. As such, the combination of those documents can be used to pretty accurately determine what entry level is. However, that comes with a caveat. Was the person in front of you educated on all of the current entry-level knowledge and skills? If someone passed the entry-level exam 30 years ago, they may or may not find some of these entry-level skills within their particular scope unless they have used continuing education to keep up with current entry-level practice. This is why continuing education is so important.

Q. About continuing education or advanced qualification, what are the key issues involved on this point?

Documentation! You need to be able to provide documentation to the board that you were adequately trained. This is easier in skills that are part of a certification process with practical and knowledge-based testing. However, certification is a loose term here. Most of continuing education certification is not certified by an outside body, but rather an accumulation of courses provided by a company. Certifications are dubious in some cases while sufficient in others depending on content, testing and skill exams.

If your scope is questioned by a licensure board, you will be asked to provide evidence of your competence and skills. Physicians also can help here. If your physician is comfortable and has seen you perform a particular task competently, they also may be able to speak to your competence if serving as your referring medical provider.

continued on page 06

Q&A, *continued from page 05*

Q. What are the key issues surrounding state regulation?

What is prohibited by law? Every state law has provisions that attempt to constrain practice. Some laws list modalities approved to be used and not others. Some prohibit "invasive techniques" and, as such, injections and suturing, for instance, would be prohibited. Or procedures may be limited, for example, to "topical medications." Every AT needs to know the state law they practice under and what exclusions and provisions are contained in the law.

Q. About public protection, what are the key issues?

When asked about whether a skill is within scope, all licensure boards need to first ask if it serves the public need and is safe to be provided by the practitioner. After all, that is the function of the state licensure boards – to protect the public from the licensed individual. If they feel the skill has an undue safety concern for a practicing AT, they should decide that it is not within scope of practice. If they feel it's safe, then they need to make decisions on how much continuing education is necessary to assure public protection. For instance, states allow dry needling with varied training requirements and content assurances for educational requirements.

Q. How valuable are these two publications in considering the scope of practice for an athletic trainer: Athletic Training Educational Competencies published by NATA and the current Practice Analysis Study published by the BOC?

Very valuable. As I said, they are integral to determine entry-level practice along with the standards and competencies that programs are required to deliver.

continued on page 07

DO ATs POSSESS LIABILITY RELATED TO COVID-19?, *continued from page 05*

If such a case were to be brought against an athletic trainer, the best way to prepare oneself is to adhere to all of the necessary and mandated risk management steps in one's employment setting. At minimum, one should be familiar with and adhere to the guidelines and resources for best practice put forth from the following agencies and organizations:

- Centers for Disease Control and Prevention
- State COVID-19 regulations
- County COVID-19 regulations
- School district COVID-19 regulations
- Employment setting COVID-19 guidelines
- NATA
- National Collegiate Athletic Association (NCAA)
- American College of Sports Medicine (ACSM)
- Occupational Safety and Health Administration (OSHA)

In addition to these resources, one should be aware of what is referred to as the Coronavirus Aid, Relief and Economic Security Act, or the CARES Act, signed into law by the president March 27, 2020. This piece of legislation includes specific provisions that may immunize or limit the liability that health care providers could face as the result of a COVID-19-related lawsuit.

Furthermore, some states have enacted similar protections. Athletic trainers should be sure to learn about applicable protective measures such as these that also grant forms of immunity when acting as a volunteer.

Since COVID-19-recommended guidelines have been fluid and frequently undergoing changes based on reported data, geography and other related reasons, it is also important to document daily what procedures were put in place based on the timely recommendations of all of the agencies involved. For example, on certain days, a county or workplace setting may have a mask requirement. Yet, during other times, they may remove such a requirement. With contact tracing and adherence to policy, it remains critical to document on record the risk management practices implemented each day based on the associated sources.

It is also reasonable to assume, with the constantly changing recommendations and numerous agencies providing such guidelines, that one could face conflicting directions to adhere to. In such cases, which are likely to be experienced, one should always communicate with senior administration and legal counsel. It is beyond the scope of this column to advise during a pandemic if a state or county policy takes precedence over another. With that said, it is always wise to take the approach of following the most protective policies available.

Athletic trainers should understand the difference between a recommendation, guideline and mandate. By law, a mandate would be considered the strongest language and interpreted as an immediate necessary requirement to follow. Mandates can be issued by governmental agencies (federal, state, county, town, etc.) or employment settings (schools, professional teams, employer, etc.). Guidelines and recommendations can also be put in place by similar governmental agencies and employment settings as well as professional associations. For example, NATA can put forth recommended guidelines as to how best manage return to sport with COVID-19. While guidelines and recommendations don't rise to the level of a law, it's highly advised to adhere to such recommendations and guidelines as these are considered best practices. Best practices are frequently endorsed by professional associations, such as NATA as well as other health agencies and organizations.

Athletic trainers have weathered many areas of change in procedures in the face of past world tragedies and challenges. ATs have adapted and improvised professional responsibilities to ensure quality care and prevention to patients. Additionally, ATs have many concerns with liability in the "new normal" in the aftermath of the COVID-19 pandemic. ATs can navigate potential liability in dealing with this historic world event by continuously being aware of and adhering to the evolving recommendations, guidelines and mandates from federal and state medical governing bodies, your employer's legal counsel, NATA and any organizational recommendations as applicable to employment settings (e.g., NCAA, intercollegiate conferences or the National Federation of State High School Associations).

Although this period of return to activity is fraught with uncertainty, frustration and concern, ATs can play an integral part in safely returning to sport through their diligence in following recommendations, guidelines and mandates; documenting safety practices; and educating their patients on COVID-19 prevention methods. As demonstrated in past worldwide challenges, ATs will continue to contribute positive solutions to evolving health care dynamics during the COVID-19 pandemic.

CASE SUMMARY

DIVISION I BASEBALL PLAYER FILES LAWSUIT AGAINST UNIVERSITY, SPORTS MEDICINE TEAM

A former Division I baseball player in South Carolina filed a lawsuit alleging medical malpractice and negligence against the university he attends and its sports medicine department, which includes an athletic trainer.

The player signed with the university after an outstanding career at a high school in the state.

During fall preseason training, the student athlete sustained a lower leg injury and was sent to the team's athletic trainer for treatment.

According to the player, that treatment included "extensive dry-needling, heat therapy, ankle restriction" and baseball fielding drills while wearing a protective boot.

The university also referred the player to a nearby orthopedic clinic. During his rehabilitation, medical professionals determined that he had an accessory soleus muscle in his right ankle, a rare growth of an additional muscle attached to the existing lower leg muscles. The player also was referred to a school-designated team physician who surgically excised the muscle.

Through his attorney, the player is claiming that that the university had an arrangement with the doctor that included an understanding that the university's sports medicine team would provide all post-surgical care.

The player's parents then arranged a visit with another physician who recommended additional testing. Subsequent tests revealed potential nerve damage and "significant deficits and defects." The physician recommended "intensive rehabilitation, specific to the deficits of strength of the right lower extremity and an independent consult with a different therapist or [athletic trainer]."

The lawsuit alleges that during the treatment for the injuries he sustained while on the team, the university willfully and wantonly "fell below the accepted standard of care for a reasonably prudent athletic program."

In addition, the lawsuit alleges that the university's improper actions and inaction cost the player his baseball career and was responsible for the physical injuries he continues to endure as a result of them not meeting established standards of care.

The lawsuit also claims that during the player's recovery and rehabilitation, the university directed him to conduct "various strenuous range of motion exercises" including fielding drills that contradicted the physician's recommendations.

The player is also asserting that during the four months following surgery, he "was not seen by a physician and received no post-surgical physician follow-up, evaluation nor treatment," and, thus, his recovery was unnecessarily delayed.

"In sports, definitely in the bigger Division I level, everybody's going to have to play through some pain," the student athlete said in published reports. "I'm not afraid of playing through some pain. I've probably played through too much pain, but I'd never reached the point where I literally could not do something because I couldn't move.

"I couldn't feel my leg. You can't do much when you can't feel something. That's like trying to grab a water bottle when you can't feel your arm. You might see it, but it's going to be hard to do."

The player said he still conducts weekly extensive rehabilitation therapy and treatment in a facility independent of the university. He underwent an additional surgery to repair a hip injury, which the lawsuit suggests "could possibly be related to participating in fielding and other baseball activities performed in the boot."

"I definitely have, like, a limp that some days, especially early on in the day, is a little more noticeable than others," the player said in published reports. "I still can't run. I'm still going through it. I still struggle with it."

continued on page 08

Q&A, *continued from page 06*

Q. You've written that athletic trainers are educated and trained to assess the status of a patient or client's postoperative, chronic, acute and subacute musculoskeletal injuries, illnesses and/or conditions to determine impairments, functional limitations and disability. Based on this assessment, athletic trainers determine the appropriate treatment goals and therapeutic interventions to reduce the extent of a patient's disability. Athletic trainers modify the treatment plans based on continual/regular assessment of the patient and discharge the patient once treatment goals are met or the patient's condition is no longer improving. How can ATs and physicians work together on these issues?

Physicians are integral to this process. Athletic trainers are not autonomous. We work side by side with physicians. In fact, there is no state where we function autonomously from physicians. The BOC dictates this in standard one of the BOC Standards of Professional Practice: "Direction - The athletic trainer renders service or treatment under the direction of, or in collaboration with a physician, in accordance with their training and the state's statutes, rules and regulations."

Because of the close working relationship of the athletic trainer and physician, an official supervisory role must be specified in the physician agreement. Minimally, the agreement should identify the existence of a collaborative professional relationship and identify the nature of the relationship as agreed upon by the physician and the AT and as required by state regulations. Furthermore, standing orders that outline services performed at the athletic trainer's discretion under the physician's direction should be approved annually and define the limitations of the athletic trainer's decision-making. Such a document should not be an impediment to allowing an AT to practice to the full scope of the athletic training practice act in their state. This relationship should be ongoing and regular. A physician should have day-to-day availability to the athletic trainer for consultation (whether in person, by phone or electronic means) to direct care.

An AT must be able to refer an injured athlete to the team physician for evaluation in a timely fashion (assuming team physician is an approved provider by the athlete's insurance plan) and receive written (and, when necessary, verbal) communication regarding recommendations and restrictions for the athlete. The team physician should be available for consultation with the AT regarding the medical care of the program's student athletes, prevention initiatives, rehab protocols and emergency medical management.

BASEBALL PLAYER FILES LAWSUIT AGAINST UNIVERSITY, SPORTS MEDICINE TEAM, *continued from page 07*

The lawsuit seeks damages for "loss of past, present and future enjoyment of life; past, present and future medical expenses; loss of income earnings and opportunities; mental anguish and suffering; pain and suffering; loss of mobility."

"While this injury and lack of proper care brought a promising baseball career to an end, our goal is to try to prevent this from happening to other young student athletes," his attorney said in published reports.

CASE SUMMARY

STUDENT ATHLETE SETTLES CASE, ALLEGING NEGLIGENT CONDUCT BY ATs AFTER CONCUSSION

During a high school football game in Illinois, a linebacker sustained a serious head injury.

The player alleged that he had suffered a concussion in a previous game and that the athletic trainer responsible for his care permitted him to participate in a subsequent game, despite knowing about the concussion.

According to the athlete, that decision led to permanent neurological damage, which resulted in him being confined to a wheelchair and having to communicate with other people via keyboard.

The athlete sued the school's athletic trainers and the school district for negligence. Specifically, the athlete alleged, in the game in which the permanent neurological damage occurred, the school's head football coach had ignored signs that he was in distress following the hit to the head. In a court deposition, an assistant athletic trainer at the school reported that the athlete's continuing symptoms of a concussion were, in fact, ignored.

In addition, the assistant athletic trainer admitted in the deposition that a week before the injury, the student had complained to the team's athletic trainer about having headaches. Those headaches caused the student to miss parts of practice during the week, according to the deposition. In addition, the assistant athletic trainer stated in the deposition that, just a few minutes before the game in which the serious injury occurred, the athlete requested to be allowed to sit out the first quarter of the game because his head was hurting. However, the coach refused to take him out of the game.

After playing in the first half of the game, the student collapsed on the sidelines and was rushed to a local hospital. Doctors had to remove part of his skull to alleviate pressure from internal bleeding. It was the bleeding inside his brain that caused the substantial and irreversible damage.

The school district decided to settle the case for $4.4 million rather than go to trial. If the case had proceeded to trial, attorneys for the athlete could have sought compensatory and punitive damages under state law. According to the state's law, when an individual takes a job, such as an athletic trainer, in which he or she is responsible for providing a service to another person fails, and to use reasonable care in carrying out that service, it can potentially result in that person being liable for any personal injury.

The student athlete asserted that it is the responsibility of athletic trainers to assess injuries and decide whether or not they are fit to play. In taking the job as athletic trainers, the athlete contended, they hold themselves out to be qualified in athletic training. By ignoring his signs of distress, the athletic trainers in this case breached the duty of care they owed him, according to the theory of the lawsuit.

What would have been the amount of compensatory and punitive damages had the case gone to trial and the athlete had won? No one knows for sure, but it is instructive to understand the purpose of compensatory and punitive damages. Compensatory damages attempt to put an injured person back in the position he or she was in before being injured. Punitive damages are intended to punish wrongdoers and discourage them from harming others in the future.