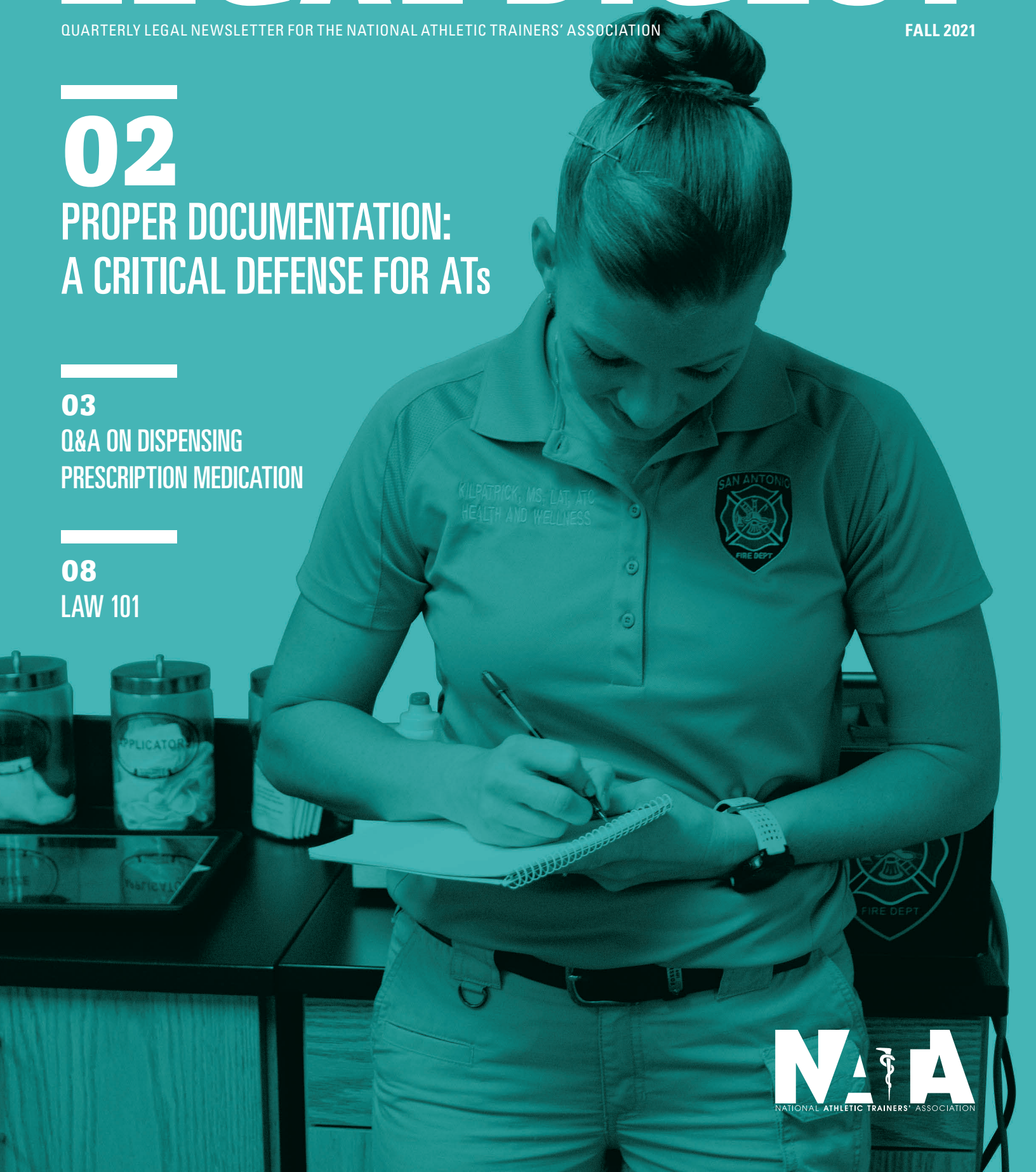
SPORTS MEDICINE

LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

FALL 2021



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; A.J. Duffy III, MS, AT, PT; Michael Goldenberg, MS, ATC, CES; Eric McDonnell, MEd, LAT, ATC; Tim Weston, MEd, ATC; and Cari Wood, ATC; and members of the NATA Professional Responsibility in Athletic Training Committee.

Proper Documentation

A critical defense ATs have in potential lawsuits or legal disputes

BY CLAIRE WILLIAMS

As health care providers, athletic trainers are held to the same standards as the physicians they collaborate with throughout a patient's continuum of care. But, as one of the first stops for many injured patients, athletic trainers have limited opportunities for protection should complications or even lawsuits arise after their treatment is completed. What they do have, though, is documentation.

Documentation has many uses and is undoubtedly valuable for patient care, and when done consistently and comprehensively, it's one of the most critical protections athletic trainers have in lawsuits or legal disputes.

Documentation that is unclear, unorganized or nonexistent gives athletic trainers limited defense in potential medical malpractice lawsuits, disputing state board complaints or complaints to human resources or third party administrators. Although legal cases dependent on athletic training documentation are relatively rare, they are a possibility, said Tammi Gaw, MS, ATC, Esq.

An expert on documentation and amateur athlete rights, Gaw iterates that good documentation can minimize the risk for ATs in these situations.

"Athletic trainers need to have a sense of fatalism, in a way," Gaw said, recommending ATs approach documentation not like "somebody's going to ask you about it in an hour, [but] document like somebody is going to ask you in five years about an athlete you haven't treated in five years from across a deposition table."

Although recorded independently by athletic trainers, proper documentation protects the entire system. It's important that all parties involved in patient care account for best practices and privacy and legal concerns. Athletic trainers just happen to be one of the first stops.

"This is how we make sure documents don't get lost, patients don't get mixed up, doctor's appointments get made and followed up on, [and] you don't send somebody home with the wrong information," Gaw said about documentation. "All of these things fall into the hierarchy of the sequence of events of documentation."

Athletic trainers should be aware of two major factors when following proper documentation protocol, according to Gaw: privacy and details.

Privacy involves how patient documentation is recorded, stored, backed up and shared. Privacy protocols can vary from setting to setting and between employers or organizations, but ATs should

be aware of common privacy concerns that can protect their patients and themselves.

How detailed and clear documentation is can also vary among practices, but adding consistent details across all patient documentation will provide more protection for ATs in unexpected scenarios.

Privacy, Privacy, Privacy

As technology continues to advance and be incorporated into patient care, it's important to consider privacy concerns with digital electronic medical record (EMR) programs, Gaw said. Ultimately, though, ATs are not typically the main gatekeepers for that kind of software. Their employer should be working with a legal consultant on decision-making for EMR programs.

Because liability for protecting patient information varies between settings, ATs should still be aware of possible security or privacy concerns with the EMR they utilize.

For example, with contracted athletic trainers, the legal burden of documentation falls on the contracting company. When considering privacy, contracted athletic trainers have to walk a fine line between protecting themselves legally and not holding onto information that they're not legally allowed to have post-treatment, Gaw said.

New systems or programs and cloud software can be a threat to the protection of digital record keeping and protection of patient documentation. "Be leery," Gaw said, of any up-and-coming data storage or EMR program that doesn't have a thoroughly developed privacy policy.

"The idea that all permanent records are backed-up in one place is a bad idea," Gaw said.

Instead, she recommends ensuring data be backed up in other places, although paper backups are not always practical. At the very least, she said, there should be a system and protocol to download and have the information saved on an external hard drive or a secure local drive.

Because there are variances in EMR programs, Deena Kilpatrick, MS, LAT, ATC, athletic trainer at the San Antonio Fire Department and expert in leading the charge on documentation in public safety, said to find the EMR that works for you and your facility, but be cautious, echoing Gaw's commentary on privacy.

Kilpatrick, for example, uses a tablet equipped with her preferred EMR program that records patients' daily logins, injury reports and treatment logs, and she can easily add that day's treatment during the session or immediately after.

Detail, Detail, Detail

Athletic trainers should also be aware of how they record patient documentation, and both Gaw and Kilpatrick agree that it should be consistent across patients. Many institutions or facilities have protocols in place to ensure documentation is consistent, but ATs should confirm that with their employer.

In the collegiate setting, for example, the risk management or legal department may have a policy that outlines how documentation should be recorded. A contracted staffing agency, though, may not.

In all cases, ATs are able to modify or create their own additions to the protocol that will best serve their patient presently and in their future care. It's imperative to document that protocol and follow it consistently.

"It's very important to learn how to document efficiently and effectively," Kilpatrick said. "It's not fun, it never will be, but it is something that you've got to figure out. Decide what works best for you as a clinical athletic trainer and get it going – today."

Kilpatrick offers a checklist that proper documentation should include. She recommends tracking the following with every patient encounter:

- Location
  - Body part
  - Field, athletic training facility, etc.
- Change in status
  - Unexpected changes or deviations from the expected
  - Appropriate follow-up documentation
- Severity
  - Mild, moderate or severe
  - Results in surgery or referral?
- Plan of care
  - Duration
- Acute vs. chronic
  - Rehab exercises, noting number of reps and sets assigned and completed
- Assessment
- Modifying factors
- Associated signs and symptoms

The NATA Best Practice Guidelines for Athletic Training Documentation document is a key resource to reference when ensuring not only adequate documentation, but legal documentation of patient medical records, as well.

The document, available to members at **www.nata.org/practice-patient-care/risk-liability**, provides best practices for handling documentation, specifically electronically. It considers modern technology, such as email, text messages, social media and EMR programs, and how athletic trainers should retain medical

continued on page 04

Q&A

Tim Weston, MEd, ATC

DECONSTRUCTING DISPENSING PRESCRIPTION MEDICINE

What can athletic trainers do when it comes to dispensing prescription medicine?

A number of factors, including federal regulations, varying state practice acts, employer hierarchy and where they're dispensing medication, can determine if and when ATs can dispense medication.

To assist athletic trainers in understanding their legal responsibility in dispensing prescription medication to patients, NATA helped create the Inter-Association Consensus Statement on the Management of Medication, available at **www.nata.org/news-publications/pressroom/statements/consensus**. This document, released in 2018, can serve as best practice guidelines for the management of medications in sports medicine facilities and other settings.

Co-chaired by Tim Weston, MEd, ATC, and Cindy Chang, MD, the task force responsible for creating the consensus statement worked to develop a resource that would be efficient and applicable.

Weston provided more insight into the consensus statement and how best to use it.

What is the Inter-Association Consensus Statement on the Management of Medication all about?

The best way to answer this question is to quote both the opening and closing statements from the statement itself:

Opening statement: "The care of an injured or ill patient may be the responsibility of just one health care provider or a team of many. Depending on the location where patient care is given and the type of patient receiving it, the sports medicine team can include athletic trainers, physicians, pharmacists, physical therapists, school nurses and athletic training students. Various members of the sports medicine team may manage different medications

continued on page 04

Q&A, *continued from page 03*

in a variety of settings, making it necessary to follow proper protocols for storing, packaging, transporting, tracking, administering and dispensing both over-the-counter (OTC) and prescription medication. It is essential for the sports medicine team to remain in compliance with all current federal and state laws and institutional regulations concerning medication management in the sports medicine setting."

Closing statement: "One or more individuals within the sports medicine team may make decisions pertaining to OTC and prescription medication management in the sports medicine facility. Appropriate decision-makers include the designated team physician, head AT, director of sports medicine, designated athletic health care administrator or an administrative body (e.g., the athletic department, school health services, school district, professional sports team front office, local hospital/health care system, or a combination of these). State and federal statutes and regulatory agencies determine medication management policies.

"Therefore, the recommendations of this consensus statement are not mandates, but instead, can serve as guidelines when creating individualized policies and procedures for specific sports medicine teams and facilities. Written policies and procedures will demonstrate that due diligence was exercised to involve and educate all concerned parties, and that all personnel have established guidelines to reference when managing medication in the sports medicine setting."

What was the impetus for publishing this consensus statement?

In June 2016, a proposal was submitted to the NATA Board of Directors to update the previous consensus statement. It stated:

"NATA developed a consensus statement in 2009 to examine the appropriate management of prescriptions in every setting: secondary, collegiate, professional sports, performing arts and physician's offices, anywhere in which our patients are given medication either for pain or for lifesaving measures. As our original NATA consensus statement stated, 'Athletic trainers

continued on page 05

PROPER DOCUMENTATION, *continued from page 03*

records electronically, while also adhering to state privacy laws and HIPAA regulations.

The Board of Certification for the Athletic Trainer also provides certified ATs with the BOC Liability Toolkit, which includes sections on documentation and medical records protection based on setting and employer.

When considering privacy, the toolkit recommends ATs are trained on HIPAA and FERPA regulations and that training should be documented. It also provides recommendations on documentation storage, length of retention on charts and proper protection of electronics.

For more information about the BOC Liability Toolkit, visit **bocatc.org/newsroom/understanding-athletic-trainer-liability-risks?category_key=at**.

By expecting the unexpected, as Kilpatrick says, or having a sense of fatalism, as Gaw says, proper documentation is not only a way to ensure the best patient care in the long term, but it's how ATs can protect themselves.

As one of the first providers many patients see in their treatment, good documentation starts with the AT. Ensuring their documentation is clear and consistent will set everyone involved up for success.

Whether the follow-up is in five years in a courtroom or a few days in reviewing treatment along a patient's continuum of care with a fellow health care provider, documentation is a critical part of every athletic trainer's treatment plan.

"The follow-up will happen," Gaw said, and ATs should be prepared for it.

CASE SUMMARY

Review Board Upholds Workers' Comp Claim for Injury in AT Facility

In a hearing at a state workers' compensation commission, an employee claimed that he sustained an Achilles tendon injury in the course of his employment with an athletic training facility and was awarded benefits resulting from that injury. Specifically, the commission ordered the athletic training facility to pay the claimant temporary total disability benefits and permanent partial disability benefits.

This case presents issues of employment and injury applicable to athletic trainers.

The athletic training facility appealed the commission's decision to the state workers' compensation review board, asserting that, although it didn't attend the formal hearing, it had a valid jurisdictional defense to the claim: the absence of an employer-employee relationship. The athletic training facility also argued that due to alleged negligence by the U.S. Postal Service, it wasn't aware of the formal hearing and was denied due process.

The review board ruled that the athletic training facility did, in fact, have actual knowledge of the claim for benefits and simply neglected to file a disclaimer.

The athletic training facility maintained that on the day of the injury, it didn't employ the claimant and that he was a self-employed individual merely renting space from the athletic training facility. The athletic training facility also asserted that the claimant was not totally disabled during the period for which he is claiming benefits.

The review board noted that the claimant appeared at the formal hearing and the commission found him to be a credible and persuasive witness.

"We may not intercede findings of credibility found by the trier," the review board stated. "The respondent had numerous opportunities to rebut the claimant's allegations."

The review board didn't cite any evidence regarding the claim that the claimant was, in fact, self-employed, inferring that it was the athletic training facility's burden to prove this allegation as the defendant. Similarly, the review board refused to discuss the extent of the injuries suffered by the claimant.

In affirming the commission's initial award to the employee, the review board stated, "We find the respondent had sufficient notice of the claim to interpose a timely jurisdictional defense and the requirements of due process in this matter were complied with. We will not speculate on why the [athletic training facility] did not avail [itself] of the opportunity."

COLUMN

Business Entities for the Athletic Trainer

BY DAVID COHEN, MS, ATC, ESQ., NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

As athletic trainers move from traditional care roles into management and entrepreneurial endeavors, it's important to understand the basics of different business entities and the benefits and drawbacks of each. This column will discuss the most common business entities from simplest (sole proprietorship) to the most complex (corporations).

It's important to note that business entities are state-created; therefore, there may be variations from state to state. Be sure to consult a qualified lawyer and tax professional who can help identify the right business entity and ensure it is properly formed, utilized and maintained.

What is a Business Entity?

A business entity is formed to conduct business-related activities. All business entities require the organizer to register the entity with the state under whose laws the entity was formed. A business entity acts through its employees and officers. It can also have its own taxpayer identification number, property and assets as well as incur debts. Depending on the type of entity, it may either pay taxes or "pass through" the profits to its owners who would then pay tax on income imputed from the company.

Sole Proprietorship

A sole proprietorship (SP) is the simplest way to start a business. Generally, there is no requirement to register an entity with the state as the owners are simply doing business under the name of their company. However, they may have to file for a "doing business as" (or DBA) license so the public knows who is acting under the business. There are no ongoing obligations, such as corporate minutes or annual reports, and tax filing is easy as the owner simply declares the profit or losses on their own taxes.

While simple, there are drawbacks to an SP. For one, more formal entities may provide liability protection for the owners since the owners remain responsible for any debts and liabilities, which means creditors can go after the owners' assets. Since the business and personal assets are intertwined, getting business credit, such as a loan, can be difficult. Additionally, ownership stakes can be hard to track, meaning it's hard for more than one person or two married people to operate a business this way.

General Partnership

A general partnership (GP) is similar to an SP, except that it includes more than one owner who are actively involved in the business. Like an SP, GPs don't require state registration, but they do require the same DBA registration. Profits and losses "pass through" the entity and are reported directly on the owners' tax returns, and assets are owned by the partners. A GP

continued on page 06

Q&A, *continued from page 04*

routinely manage prescription and over-the-counter medication under the supervision, advice and consent of a physician.' Establishing recommendations for managing these medications in the athletic training setting is necessary to ensure all involved follow proper protocols.

"This 2016 request to update the consensus statement will address the management of emergency medications, which includes EpiPens, short acting beta agonist inhalers and naloxone, including appropriate education, training and usage by an athletic trainer during life-threatening situations.

"Due to the recent opioid epidemic, there has been a significant increase in the usage of naloxone as an emergency medication and many ATs are dealing with this problem first-hand. Currently, there is no official document from NATA that has addressed this issue."

Once the updated consensus statement was completed in 2018, the consensus statement had gone from just three pages to 14. Most of the original sections from the 2009 statement were kept; however, more in-depth information and examples were provided within this statement. Additionally, the consensus statement group better defined the sports medicine team providers/members along with their respective roles.

How do the roles and responsibilities of athletic trainers, as members of the medical team, fit in with the consensus statement?

The updated consensus statement was requested by ATs to contain language that addressed the management of emergency medications, which includes EpiPens, short acting beta agonist inhalers and naloxone, including appropriate education, training and usage by an athletic trainer during life-threatening situations. At the time of the publication, naloxone was becoming available for usage by trained medical professionals such as ATs.

ATs needed to have a clear definition of a sports medicine facility as well as best practices for patient-centered care. A sports medicine facility commonly serves as the primary location for health care for those

continued on page 06

Q&A, *continued from page 05*

participating in secondary school or collegiate athletic programs and professional athletics. The AT should follow policies and procedures written in conjunction with the team physician and supported by the school or work administration. The AT should consult with their state's regulations concerning all medications prescription and OTCs, as well as AT administration of emergency medication.

In addition, documentation of the annual review of these policies and procedures by all members of the sports medicine team, especially ATs and team physicians, should be kept on file and retrievable for a minimum of three years. The supervising physician should approve and sign the policies and procedures, if required by state law.

How does the consensus statement intersect with current state and federal laws?

Since athletic trainers work in a variety of clinical settings, each of which has unique circumstances concerning both OTC and prescription medications, they must understand all laws regarding medications in the states in which they practice.

Do ATs have specific roles and responsibilities when it comes to dispensing medication according to the statement?

One or more individuals within the sports medicine team may make decisions pertaining to OTC and prescription medication management in the sports medicine facility. The appropriate decision-makers include the designated team physician, head AT, director of sports medicine, designated athletic health care administrator or an administrative body (e.g., the athletic department, school health services, school district, professional sports team front office, local hospital/health care system or a combination of these).

continued on page 07

BUSINESS ENTITIES FOR THE ATHLETIC TRAINER, *continued from page 05*

also doesn't offer the same level of liability protection and each partner is responsible for the actions and debts incurred by other partners. However, a GP is different in that it has a partnership agreement that sets the rights and obligations of partners. This can be particularly helpful if a dispute arises between partners since a method of resolution is often contained in the partnership agreement.

Limited Partnership/Limited Liability Partnership

A limited partnership (LP) is slightly more complex than a GP. It is the simplest form of business entity that requires state registration. Like a GP, it requires a partnership agreement. The need for a partnership agreement, state registration and an annual report to the state makes it more expensive than an SP or GP.

In an LP, one or more persons or entities serve as "general partner" and assumes liability for the business while "silent partners" who aren't involved in operating the company enjoy a level of liability protection. As such, an LP can be a good option if raising money since investors can serve as silent partners without risking assets outside of their investment. Profits and losses "pass through" to the partners who report them on their own taxes.

An LP has a cousin called a limited liability partnership (LLP), which operates much the same way. The difference is that there is no general partner and partners are not personally liable for the business. The laws regarding LLPs vary from state to state, and many states restrict LLPs to professions in the medical, accounting and legal fields. An athletic trainer who is going into a health care business with other athletic trainers should consult local counsel to see if an LLP is a permissible business entity form.

Limited Liability Company

A limited liability company (LLC) is a newer form of business entity that provides the liability protection of corporation without the level of formality. As such, they have become a popular business entity for small business owners.

Owners are called "members," and one person is selected to be the "managing member." An LLC requires an operating agreement, which is the LLC version of a partnership agreement; state registration; and an annual report to the state. The operating agreement is more complex than the partnership agreement used by a GP or LP, so setting up an LLC is slightly more expensive.

Like a corporation, owners are typically not responsible for business losses. From a tax perspective, the LLC can opt to be taxed as a corporation, pay tax and distribute post-tax gains and losses or "pass through" those gains and losses and allow the members to fully claim them on their own taxes.

Corporation

A corporation is a separate legal entity that exists independently from its owners, who are called shareholders. Shareholders have strong protection against corporate liabilities. A corporation has officers and a board of directors who control the entity, although one person can be the sole shareholder, officer and member of the board.

Corporate laws place strict requirements on a corporation. In addition to state registration and bylaws, which act like an operating agreement or partnership agreement, a corporation is required to have a formal annual shareholder meeting with minutes that are kept in a record book along with board of directors meeting minutes. If such formalities are not followed, the corporate status can be compromised, which could leave shareholders responsible for the corporation's liabilities.

While formal, corporations do offer some benefits in addition to liability protection. If the corporation is small and the incorporators file a form to make an "S-corporation" election with the IRS, it can "pass through" profits and losses like a simpler entity form rather than pay corporate taxes. However, in doing so, the corporation may be limited in issuing stock, which may make new investor investments more difficult.

If an "S-corporation" is not made, the company operates as a "C-corporation." Such a business has to pay taxes separate to its shareholders who pay taxes on dividends, or profits, paid by the corporation. However, with fewer limitations on offering stocks or other equity, a C-corporation is a good entity form for an entrepreneur looking to grow a large-scale business that would require outside investment money.

Overall, there is an alphabet soup of business entity types available. Changing from one to another can be costly, especially when going from a more to less complex form. Since every situation is different, it is important to have a basic understanding of what is available and speak to competent legal and tax advisors to select the type that provides the most benefits and fewest risks.

CASE SUMMARY

Oregon School District Settles Case With Severely Injured Athlete

An Oregon school district has reached a settlement with an athlete who suffered severe injuries to his head, back and neck, as well as permanent brain damage, in a case involving several athletic department personnel, including an athletic trainer.

The student athlete was injured in drills prior to a junior varsity football game in October 2016. The football player and his parents filed suit against the school district and athletic department staff, asserting that they weren't notified of the injuries and proper testing wasn't completed by school district officials.

After the game, the athlete's mother arrived home to find her son "curled up in the fetal position on the couch, sobbing because of a severe headache," the lawsuit stated. The athlete was unable to walk without falling and spent most of the night vomiting, according to the lawsuit.

The lawsuit specifically stated that the athlete still suffers from headaches, vision problems, light sensitivity and balance problems that have caused him to fall and break his nose and brain damage that prevents him from returning to school full time. His attorney also has stated the athlete is unable to safely swim, bowl or hunt – activities he used to enjoy. He also can't drive a car in his current condition, and may never be able to, according to the family's attorney.

The plaintiff requested $25 million in damages and $13.2 million to cover past and future medical expenses. The parents also asked for $350,000 in compensatory damages for the emotional distress they sustained in the relationship with their son.

In addition to the school district, those named in the lawsuit included the district athletic director, athletic trainer, head football coach and junior varsity football coach. Specifically, the lawsuit claimed that during the game, the athlete hit his head repeatedly and suffered injuries that knocked him unconscious, exacerbating the earlier concussion sustained during prior drills.

In 2009, Oregon lawmakers passed Max's Law, named for 17-year-old quarterback Max Conradt, who suffered a concussion and then was cleared to play in another game without high school officials recognizing the severity of his injury. He collapsed at half-time because of serious bleeding near his brain, fell into a coma for three months and ultimately suffered irreversible brain damage.

The law prohibits players from being sent back into a game after a suspected concussion, requires a medical professional to examine and clear players before they can return to play and calls for coaches to receive annual training in recognizing concussion symptoms.

The athlete's lawsuit claims the school district violated Max's Law by returning him to play in the game after an athletic trainer suspected he'd suffered a concussion. The lawsuit states that the coach had to pull the athlete from the game because he was disoriented and couldn't remember the plays.

When the lawsuit was filed, the school district declined comment, citing legal and privacy reasons, but issued the following statement: "Our focus is always on the safety and emotional well-being of our students and in providing them a first-class education. If there are lessons to be learned from this or any other situation, we will apply them with that focus in mind."

Although he was diagnosed with a concussion, the lawsuit maintained that the athlete was inserted back in the game in the fourth quarter and again played in a subsequent game. The lawsuit also stated that the athlete never received an immediate post-concussion assessment and cognitive testing after the first game.

The district's athletic trainer cleared the teen to play four days later, despite lingering symptoms of concussion, according to the lawsuit. The suit also claims that the athlete wasn't released by a medical professional before being allowed to return to football practice and games.

In November 2020, all claims against athletic personnel, including the athletic trainer, were dismissed. The case remained against the district and some of the claims against the junior varsity coach were left open.

During this hearing, a video of the game surfaced. At this time, attorneys for the athlete and his parents asked the court to revise the order to include the pregame drills. The judge denied this request.

The amount of the settlement was not disclosed.

Q&A, *continued from page 06*

What are examples of emergencies that ATs can administer medications?

ATs should always consult with their state's regulations concerning AT administration of emergency medication. It's important to be aware of the current laws on possessing, dispensing and administering medications intended for emergencies. Different laws guiding storage and administration may govern epinephrine, naloxone, betaagonist inhalers, glucagon, oxygen and other medications.

ATs should follow the policies and procedures written in conjunction with the team physician and supported by the school administration regarding emergency medication.

What about OTC medications?

Although there is widespread belief that ATs aren't permitted to dispense OTC medication, it's challenging to find regulations prohibiting this practice. Ultimately, the decision to dispense OTC medication is dictated by existing state laws, practice acts and written policies and procedures established in consultation with the supervising or collaborating physician.

What is the NCAA guidance in this area?

The NCAA Sports Medicine Handbook has a chapter on dispensing prescription medication, which is a must read for all members of the sports medicine team, particularly the athletic training staff and team physician.

In what areas should ATs be trained on this subject?

Written policies and procedures will demonstrate that due diligence was exercised to involve and educate all concerned parties, and that all personnel have established guidelines to reference when managing medication in the sports medicine setting.

continued on page 08

Q&A, *continued from page 07*

State and federal statutes and regulatory agencies determine medication management policies. Therefore, the recommendations of this consensus statement are not mandates, but instead can serve as guidelines when creating individualized policies and procedures for specific sports medicine teams and facilities.

What are the consequences for an AT who doesn't comply with current rules and regulations in this area?

ATs could be subject to loss of state licensure, loss of certification from the BOC and violation of the NATA Code of Ethics. In the statement, we cited examples of application lawsuits and athletic training violations, and included this language: "The consequences for noncompliance with the appropriate management and administration of medications in sports medicine facilities range in severity. Both state and federal laws as well as DEA regulations can be used to determine noncompliance and any resulting penalties or discipline."

What takeaway points do you want to emphasize?

- One or more individuals within the sports medicine team may make decisions pertaining to OTC and prescription medication management in the sports medicine facility. The designated team physician, head AT, director of sports medicine, designated athletic health care administrator or administrative body.
- State and federal statutes and regulatory agencies determine medication management policies and these must be reviewed.
- Written policies and procedures will demonstrate that due diligence was exercised to involve and educate all concerned parties, and that all personnel have established guidelines to reference when managing medication in the sports medicine setting.

LAW 101

Understanding the Process When Complaints Against ATs Are Filed With Regulatory Agencies

Editor's note: LAW 101 is a Sports Medicine Legal Digest *series created to break down some of the legal issues athletic trainers may face. From glossaries of common legal terms to in-depth reviews of historic cases in sports medicine law, LAW 101 is intended to help athletic trainers better understand the risks and responsibility that come with being a health care provider to a wide variety of patient populations.*

What's the process when an athletic trainer is faced with a complaint and faces possible disciplinary action by their state or professional regulatory board?

According to Jamie Musler, DLP, LAT, ATC, NATA Professional Responsibility in Athletic Training District One representative, chair of the Massachusetts Board of Registration of Allied Health Professions and member of the BOC Regulatory Affairs Advisory Panel, understanding the complaint process can be an important factor in the AT achieving a favorable outcome.

Each regulatory agency or board that oversees athletic training practices has its own process, guided by state laws and agency procedures, for dealing with the complaint. While the process in each state may vary, the general process and components can be outlined broadly, with the understanding that ATs should review the components most applicable to their practice.

The description below relates to a generic disciplinary matter for the purpose of education. It's important to note that a case may proceed differently based on the particular aspects of that proceeding.

The Complaint

Complaints are submitted through a web-based form, direct letter or, in some cases, by phone. Complaints can also be initiated by direct or electronic communication from a law enforcement agency, another national or state regulatory agency or a reporting authority contracted or verified by the board.

Initial complaints may have the name of the licensee, a description of the complaint and any supporting evidence.

Most complaints are submitted by former patients, colleagues, employers or insurance providers who have information or witnessed the licensee doing something concerning. Typical complaints can include failure to adhere to standards of practice, fraud, negligence, practice while impaired by alcohol or drugs, sexual misconduct and unlicensed practice.

In most cases, the regulatory agency or board doesn't seek out additional violations, limiting their actions to the review and adjudication of complaints that have been presented to them.

Initial Review

The complaint is initially reviewed by an administrator in the investigatory office. This review will include verification that the information is complete, the individual is licensed or regulated by the agency or board and the issue could constitute a violation of applicable regulations.

Once reviewed, the complaint may be closed with no action, referred to another agency with jurisdiction or referred for further investigation.

The Investigation

When a complaint is referred for investigation, the information is sent to an investigator. Most regulatory agencies have trained investigators who will interview the person filing the complaint, the licensee and other witnesses, such as coworkers, supervisors, etc., who may provide additional information; and obtain and review medical records, employment records, websites, other media and any other relevant documentary evidence.

The investigator will collect evidence, document their findings and summarize the statute, regulation and/or professional standard that may have been violated. Depending on state or agency policy, the investigator may make a recommendation based on the investigation. Recommendations may include closing the case due to lack of evidence; board review of profes-

sional conduct, scope of practice and standard of care; or a recommendation of initiating an administrative proceeding against the licensee.

Regulatory Board Review

Once the investigation is complete and the complaint is referred to the board for review, the case will be put on the agenda for a scheduled board meeting. The board may utilize a review subcommittee made up of a limited number of board members or the full board may review the case. Either way, the final decision will be the result of a full board vote of the majority.

During the review process, the board may request further investigation, invite the licensee and/or witnesses to appear before the board or conduct a final vote on the case.

The board ultimately decides if the evidence supports a substantial violation of law or regulation has occurred. If the evidence isn't sufficient, the case is then closed and no further action is taken.

If the board believes a violation of law or regulation has occurred, the board may seek to impose a variety of actions, including issue a warning, censure or reprimand; impose a civil penalty or conditions of probation; or suspend or revoke their license.

Additionally, if the board believes a violation has occurred, the case will be referred to the prosecutor for the formal initiation of an administrative proceeding, in which an order to show cause or other similar charging document is issued to the licensee and the licensee has the opportunity to respond.

The order to show cause is the formal charging document that outlines the alleged violation(s). Once the order to show cause is served, the licensee has 30 days to respond in writing or the matter will result in a default finding of guilt. This is also the opportunity for the licensee and board, through the prosecutor, to reach a settlement prior to a formal adjudication hearing.

The vast majority of cases are resolved by settlement without the need for a formal adjudicatory hearing. If a settlement is reached and approved by the board, a consent agreement outlining the terms will be drafted and signed.

A consent agreement is a negotiated settlement between the licensee and board. The agreement is voluntary and requires the licensee to admit to one or more violations of law. The licensee also agrees to all terms and sanctions outlined in the agreement.

Once signed and executed, the consent agreement is considered discipline on the licensee's record.

Adjudication Hearing

Once a complaint – aka order to show cause – has been issued and the licensee responds, a hearing is scheduled.

The hearing is similar to a criminal or civil proceeding in that witnesses may testify, evidence is presented and procedural issues are addressed, although such proceedings are not as formal as civil or criminal litigation.

In the case of a hearing, the hearing officer – a judge or court magistrate – oversees the process and acts as both judge, by determining the law, and jury, by determining the facts.

After the hearing concludes, the hearing officer will issue a decision that addresses the findings and conclusions as well as whether a violation of law has occurred.

In such a case, the matter is again referred to the board, which then imposes an appropriate sanction based on the facts and violations as found by the hearings officer.

Disclaimer: *Jamie Musler, DLP, LAT, ATC, is chair of the Massachusetts Board of Registration of Allied Health Professions, a member of the NATA Professional Responsibility in Athletic Training Committee and a member of the BOC Regulatory Affairs Advisory Panel. The opinions in this article are his own and do not represent the opinion of any agency, board or committee.*