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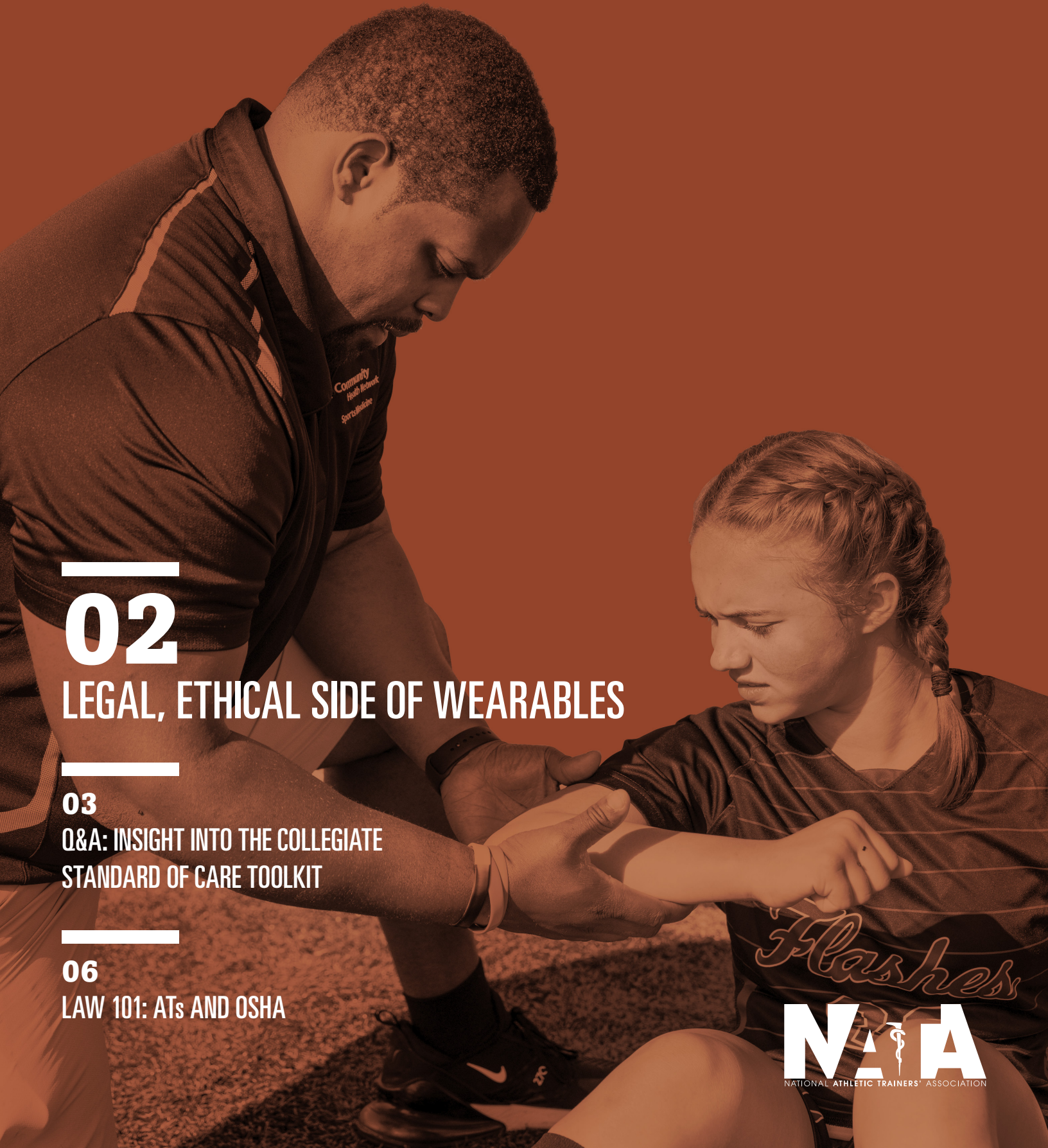

NATIONAL ATHLETIC TRAINERS' ASSOCIATION

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REVIEWED BY

The content included in this issue was reviewed by the NATA Editorial Advisors, Pat Aronson, PhD, ATC; Marisa Brunett, MS, LAT, ATC; 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.

Legal, Ethical Side of Wearables

Sports Science module outlines what to know about collecting, using biometric data

BY BETH SITZLER

As technology has progressed, so too has the consumers' access to wearable devices that measure everything from the number of steps they've walked to their heart rate and sleep patterns. While this information can provide valuable insight, how it's interpreted and used – as well as who has access to it – can potentially lead to legal and ethical concerns.

"Athletic trainers are coming across wearables more and more in their practice," said Tampa Bay Rays Director of Baseball Performance Science Joseph Myers, PhD, ATC, FNATA. "A lot of these variables that used to only be available on the health care provider side are now available to anyone. We run into situations where coaches and other individuals are using the information. So, it's important to have a better understanding of, one, how to interpret it and, two, how to use it in a valid way."

Myers, who has been using wearables with the Tampa Bay Rays for eight seasons, shared his insight on the topic in the recently released Sports Science Series Module 4: "Wearables in Sports: Legal and Ethical Considerations to Data Capture and Use," found in the NATA Professional Development Center. The module outlines some of the pitfalls of wearables, what to look for when selecting a wearable, how to use the data collected, ownership of that data and best practice recommendations.

"Athletic trainers need to have an understanding of, if these devices are going to be used, which in some cases they should be used, that they're done in a responsible manner, that the athlete is a part of the process, that the athlete has some autonomy over it and that the information being gathered

What To Know About Informed Consent Waivers

When collecting biometric data from athletes, it's important that they are informed and aware of who does and doesn't have access to their information and how that information will be used.

Barbara Osborne, JD, a professor with the Department of Exercise and Sport Science at the University of North Carolina, said athletes can sign an informed consent waiver that outlines this information and grants permission to use their personal health information, as stated in the document.

"Then you're protected," she said. "You're not going to have a HIPAA problem because you have consent – but you still need to keep the data secure, because it is personal health information, and only people who are specified can have access to it."

When it comes to creating an informed consent waiver, Osborne said it's important to include as few people as possible, ensuring that only those who are necessary to be able to properly interpret and apply the data are included. Depending on the data collected and sport, this may or may not include coaches.

"Say you're a rifle coach, or some sort of shooting coach, so respiration, heart rate is critical to performance, and it's definitely personal health information," she said. "I think a coach in that situation would probably need access to that material in order to help that athlete improve their performance through relaxation techniques or respiratory exercises. … I think something like that, where in order for the coach to make coaching decisions on how that person performs or how they should even train, it's appropriate for the coach to be included.

"But when you're talking about injury rehab information and personal health information that the athletic trainer might be collecting, I don't think it's necessary for the coach to see any of that stuff. They just need the aggregate report on where the medical professional thinks that person is relative to return to play, etc."

from it is being interpreted correctly and used appropriately for the health and welfare of the player," he said.

Myers previously presented on this topic with Barbara Osborne, JD, a professor with the Department of Exercise and Sport Science at the University of North Carolina, during the 73rd NATA Clinical Symposia & AT Expo in 2022.

"One of the big areas of liability is when people aren't properly trained on what the data actually is, how to interpret it properly and what it can be used for," Osborne said.

For example, Osborne said, there was a situation in which an individual used aggregate data from an entire pro sports team to create a workout plan based on the team's overall averages.

"A couple of athletes had season-ending injuries because of that," she said. "That's not where each individual should have been starting because those people who are at the bottom of the chart are starting at 80% and the people at top of the chart might have been starting at 20% or 30%.

"When you use [wearables] for performance data – and we're looking at strictly just performance data that has no health indicators – you need to know what that stuff does so that you aren't making decisions based on information that would put somebody's health at risk."

Myers said the athletes' best interest should be at the forefront of all decision-making, and that extends to which wearables to use.

"Just because Device X says it can measure readiness for play, it doesn't mean that it's accurately measuring variables that provide an indication of readiness," Myers said. "There's a misconception that these devices are accurate. In some cases, some of them are. We use many of the devices that I talked about in the presentation, but we do our own validation to make sure that it provides an accurate indication of whatever it is we're trying to measure. We put a lot of time into the validation process before we implement it with our players."

One legal gray area is how wearable devices and biometric data relate to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law that protects sensitive patient health information from being disclosed without the patient's consent or knowledge.

"HIPAA applies broadly to anything that would be considered personal health information," Osborne said. "So, it's any metric or measurement of anything that would be personally identifiable, related to someone's health."

While all health care providers must follow HIPAA standards, questions arise when the data isn't collected by a medical professional.

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Q&A

INSIGHT INTO THE COLLEGIATE STANDARD OF CARE TOOLKIT

Tory Lindley, MA, ATC

This June, NATA released a valuable new resource, the Inter-Association Collegiate Standard of Care Toolkit, which is designed to help athletic trainers meet or exceed specific standards of care in the collegiate setting. To learn more about the toolkit and legal issues that could arise in its implementation, the *Sports Medicine Legal Digest* interviewed Tory Lindley, MA, ATC, who chaired the task force that oversaw the creation of the toolkit.

Q. What was the impetus behind the launch of the Collegiate Standard of Care Toolkit?

Athletic trainers in the collegiate setting, at all levels, carry with them a tremendously large amount of responsibility as it pertains to the expansive expectations in health care. Parents of every student athlete have entrusted team physicians and athletic trainers with the health and safety of the daughter or son. This includes an expectation to stay on top of best practices in injury prevention, injury management, emergency preparedness, injury rehabilitation, mental health management, performance enhancement and a multitude of other responsibilities. Athletic trainers and team physicians take their role seriously and have always been interested in meeting or exceeding the standard of care. It has always been challenging to find sports medicine best practices across multiple publications and resources. So, while highly aspirational, the toolkit was developed to attempt to bring all the resources to one site and provide guidance for athletic trainers and team physicians to evaluate their sports medicine practice.

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Q. From the legal perspective, what do you consider the key elements of the toolkit?

The toolkit is intended to serve as a general educational aid and includes information about protocols and procedures that are supported within the medical and athletic training communities as approaches to manage and decrease the instances and/or impact of certain injuries. NATA and the toolkit's partnering organizations have made best efforts to be accurate and comprehensive in the creation of the toolkit and to share relevant and applicable third-party resources.

We are excited to present more than 500 standards, as organized in 16 different health care domains. This provides the athletic trainer an opportunity to evaluate their program, one area (domain) at a time, as they work with team physicians and athletic administration to evaluate opportunities for improvement.

Q. How should athletic trainers deal with problematic legal issues, such as not having the resources to implement a standard or dealing with an emergency situation?

In any area where an athletic trainer and team physician identify that they fall below standard of care, this toolkit will provide additional talking points, additional resources for solutions and, hopefully, additional impetus to have a very important and a very direct conversation with decision-makers. In many cases, however, meeting or exceeding the standard of care does not require funding, rather the creation of or updates to existing policy and procedure. Or it requires the coordination of the teamwork needed to execute that policy or procedure as it pertains to appropriate safety measures or health care execution.

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LEGAL, ETHICAL SIDE OF WEARABLES *continued from page 03*

"It [also] gets cloudy when you have personal health information and it's being used not to make health decisions for someone, but to make performance decisions," Osborne said.

HIPAA also dictates security rules for personal health information, such as password protection and data encryption.

"Depending on the type of data you're collecting, the levels of data security can be different," Osborne said. "You need to know what it is that you're collecting, what rules that falls under and then have your IT people make sure that you're giving it the level of security that it needs so that in the case of a breach, you're not going to be liable because you did what a reasonably prudent organization [or] medical professional would do."

Osborne said if ATs are unsure if the data being collected falls under HIPAA, it's best to err on the side of caution and follow HIPAA standards and rules.

"From a legal perspective, if you're following HIPAA privacy and security rules, then you're most protected," she said. "From an ethical perspective, I think you should only share information with people who absolutely need to know or have been listed in an informed consent to have access to that information because, under HIPAA, your coach doesn't have a right to access your athletes' personal health information. … It's really important to keep the data safe and to treat the personal health information that is collected through biometric data private in that way, unless you have authorization to share it.

"The biggest risk for any health care professional is negligence. You need to know what a reasonably prudent professional in the same or similar circumstance would do and do it. So, aside from keeping data private and secure, it goes to your knowledge. Are you collecting this information correctly? Are you using it in the correct way? And if you deviate from how it's supposed to be used, you are putting yourself at risk."

Since the module became available in July, Myers said he's received positive feedback from participants.

"This is information athletic trainers are needing and wanting," he said. "It's not a situation anymore that just pro teams or big-time college teams can afford this type of instrumentation. In some cases, parents are buying it for their high school kids. So, it's something that [ATs in all settings] are coming across."

Register for the Sports Science Modules at **pdc.nata.org**. (Note: Module 1 must be completed before the other modules in the series can be accessed. After completing Module 1, the rest can be completed in any order.) Learn more about the Sports Science Modules in an NATA Now blog post, **www.nata.org/blog/lydia-hicks/new-sports-science-courses-pdc**.

But Who Owns the Data?

When it comes to biometric data ownership, "the jury is really out," said Barbara Osborne, JD. While some believe it belongs to the athlete as they produced it, others believe it belongs to the person who invented the wearable.

"There's a legitimate legal argument that the data wouldn't exist unless you had this tool to be able to collect it, and therefore, it's owned by the company that created that instrument," she said. "Then, in the case of professional athletes, because the professional athlete is an employee of the club, there's also an argument that the club owns the data because they are basically professionals doing a work for hire and all the stuff they produce actually belongs to the club, unless there's an agreement or a contract that says otherwise."

Because the case for ownership can be made by many involved parties, Osborne said it's important that when an organization enters into a contract with a biometric data company that it is clearly outlined who has access to the data and what it can be used for.

"The people who are inventing [wearables], the real value is in the data that is collected," she said. "They improve the quality of their equipment and the ability of their algorithms to predict things based on the data. The more data they can get, the better they can hone the tool.

"If it's a school, a pro team or [other setting] and they're getting into an agreement with a company, then they have the ability to negotiate that contract as to: Can you use this data? Can you use it only if it's de-identified? Can you use it only under these circumstances? But to just blanket say, 'You can have everything,' then that puts you back in that HIPAA-privacy bind. Because what if that organization now turns around and sells identified data to somebody else?"

CASE SUMMARY

Appeals Court Says University May Be Liable for Death of Athlete Despite Liability Waiver

An appeals court has found that a university may, in fact, be liable for the death of one of its student athletes, even though the athlete signed the university's standard documents waiving liability.

The case involved a 19-year-old collegiate football player who died after collapsing during practice shortly after telling the head football athletic trainer he wasn't feeling well. According to court documents, the athlete specifically told the athletic trainer that he had a bad cough, chest congestion and shallow breathing.

The court records indicate that the athletic trainer responded to the athlete's complaints by taking his temperature, which was found to be within normal range. The athletic trainer indicated that he believed that the athlete just had a cold, according to court records. The athletic trainer didn't refer the athlete to the student health clinic, but instead permitted him to continue participating in the planned athletic activities, the court records show.

The athlete subsequently took himself out of practice, complaining that he was feeling dizzy and his chest felt tight. An athletic trainer took him to the sideline, giving him treatment before having him rest. Less than an hour later, the athlete collapsed and was taken to the hospital, where he ultimately died, according to court documents.

The athlete's mother told the local media that she wanted to see a change in the way universities treat their student athletes.

"I, myself, would like to see the culture change," she said. "I would like to see EKGs done at the school. ... I don't want another mother to go through what I went through."

Court documents also show that the athlete had complained of similar chest pains earlier in the year, though the athletic trainer didn't do anything with that information.

"If an athlete, a student athlete, a 19-year-old young man complains of chest pain in a practice, then that should be an automatic red flag to send them to a doctor to get evaluated," the attorney for athlete's family told the local media.

The athlete's family filed a lawsuit against the university, seeking punitive damages for negligence it claimed resulted in the death of their son, which, they asserted, could have been prevented.

Due to a liability waiver signed by the athlete, a trial court granted summary judgement to the university, the appeals court opinion notes. Specifically, the waiver on behalf of the university, called the Athletic Participation Release of Liability and Waiver of Liability stated: "I am aware that playing or practicing to play/participate in any sport can be a dangerous activity involving many risks of injury. I understand that the dangers and risks of playing or participating/practicing may include, but are not limited to: death, serious neck injury, serious spinal cord injury, which may result in complete or partial paralysis."

However, the appeals court ruled that the language used in the waiver didn't expressly inform the athlete that he would be contracting away his right to sue the university for its potential negligence.

Ultimately, the court decided the wording was unclear and difficult for the athlete to know what he was giving up. The opinion states that the waiver could have been understood to mean that the athlete was agreeing to allow the university to take culpability in the event that they injure other players.

On the other hand, the appeals court also said that the athlete's family hadn't yet met the threshold to claim punitive damages from the university, adding that the Florida Supreme Court requires, "the character of negligence necessary to sustain an award of punitive damages must be of a 'gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard of the safety and welfare of the public, or that reckless indifference to the rights of others which is equivalent to an intentional violation of them."

The bottom line, according to the court, is that while some of the evidence brought forth in the case has supported the family's allegations, there isn't yet enough to warrant punitive damages.

The case is set to return to a trial court for further consideration.

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Q. What happens if the standard of care does not align with a state law?

Athletic trainers should always keep their state practice act front of mind. That said, the project steering committee considered state law when developing these standards of care. Additionally, within the opening "terms and conditions," NATA and partnering organizations recognize that in some cases, a state statute may exceed the national standard of care. As such, the state law should be followed. One of the best examples of this is use of an AED. While the national standard for access to an AED is included in the toolkit, there may be a state law that has a more aggressive requirement for outdoor facilities. The state law should be followed.

Q. What major legal questions do you think ATs will have for attorneys?

I would encourage all athletic trainers to develop a relationship with their on-campus office of general counsel. It is a valuable relationship in so many ways as often the office of general counsel can advocate for the athletic trainer and the sports medicine program. For this project, ATs should communicate their desire to complete the self-audit survey and then expect to have follow-up conversations related to areas of strength as well as opportunities for programmatic improvement.

Q. Does the toolkit apply to all NCAA Divisions?

Once developed, each of the 500-plus standards of care were evaluated by subsets of the project steering committee. These subsets included athletic trainers and physicians at seven different levels across intercollegiate athletics. These levels included NCAA autonomy 5, group of five, other Division I, Division II, Division III, NAIA and national junior college or

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two-year institutions. During their evaluation, they were able to, through a Delphi process, assign a level of expectation specific to their setting (NCAA Division I or NAIA, etc.). These included a designation of either essential, recommend or consider for implementation for each standard.

Q. Do you think the toolkit could lead to more lawsuits filed by college athletes?

The word "could'" is tricky. I don't think that the creation of this standard of care toolkit, by the four partner organizations, will lead to more lawsuits filed by college athletes. I strongly believe that, for the first time, we have more than 1,000 best practice resources to support more than 500 standards of care in 16 different health care domains, in one place! This provides athletic trainers and team physicians a resource to self-audit their program to advance health care on their campuses. By advancing health care this will, in theory, improve care and create an even safer environment for student athletes to practice and compete.

Q. Do you anticipate that most ATs will be responsive to using the toolkit?

The feedback from athletic trainers, at all levels, across the country has been extremely positive. Additionally, the launch of the toolkit by our partnering physician organizations has been very well received! We are strongly encouraging ATs to take step one in the process. In that step, athletic trainers and athletic health care administrators will complete the survey. The survey serves as the self-assessment of their own program. In doing so, the standards of care come to life as they are tested and evaluated for that sports medicine program. Athletic trainers have always embraced the pursuit of excellence in health care and the desire, through lifelong learning, to provide the very best care for their patients. This toolkit is designed to support them in that pursuit.

LAW 101

Athletic Trainers & OSHA: What's the Connection?

Whatever setting athletic trainers work in, they may be subject to the regulations promulgated by the Occupational Safety and Health Administration (OSHA), which is part of the U.S. Department of Labor.

OSHA's mission is "to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance."

Athletic trainers need to comply with all relevant OSHA regulations. The two most important rules applicable to athletic trainers concern the provision of first aid and the Bloodborne Pathogens (BBP) Standard.

Bloodborne Pathogens

OSHA's BBP Standard applies to all occupational exposures to blood or other potentially infectious materials. For those employees, the employer is responsible for:

- Establishing a written exposure control plan to be reviewed and updated at least annually
- Instituting engineering and work practice controls to eliminate or minimize employee exposure (e.g., sharp containers, safer medical devices)
- Providing appropriate vaccinations and antibody testing as recommended by the Centers for Disease Control and Prevention
- Providing and ensuring the use of personal protective equipment (e.g., gloves), proper handling, shipping and laundering of contaminated items and proper decontamination of reusable equipment and work surfaces
- Proper disposal of regulated waste to bloodborne pathogens

The BBP Standard applies to athletic training students, faculty and/or staff members who have occupational and/or educational exposure with blood or other potentially infectious materials. Exposure means reasonable anticipated skin, eye, mucous membrane or parenteral contact with blood or other potentially infectious materials that may result from the performance of one's duties. Bloodborne pathogen means pathogenic microorganisms that are present in

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human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus, hepatitis C virus and human immunodeficiency virus.

Other potentially infectious materials can include, but aren't limited to, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, all body fluid that is visibly contaminated with blood and all body fluids in situations where it is difficult or impossible to differentiate between body fluids.

Therapeutic Exercise and First Aid

First aid does include therapeutic exercise. In general, anytime an athletic trainer, in any setting, recommends exercise to someone who exhibits any signs or symptoms of a work-related injury, it is a recordable case.

OSHA discussed the issue of therapeutic exercise in the preamble to the final rule revising its injury and illness recordkeeping regulation. OSHA stated that it considers therapeutic exercise as a form of physical therapy and intentionally didn't include it on the list of first aid treatments in Section 1904.7(b)(5)(ii). Section 1904.7(b)(5)(ii)(M) states that physical therapy or chiropractic treatment are considered medical treatment for OSHA recordkeeping purposes and aren't considered first aid. Section 1904.7(b)(5)(iii) goes on to state that the treatments included in Section 1904.7(b)(5)(ii) are a comprehensive list of first aid treatments. Any treatment not included on this list isn't considered first aid for OSHA recordkeeping purposes.

According to OSHA, however, if treatment is administered as a purely precautionary measure to an employee who doesn't exhibit any signs or symptoms of an injury or illness, the case is not recordable. For a case to be recordable, an injury or illness must exist. For example, if, as part of an employee wellness program, an AT recommends exercise to employees who don't exhibit signs or symptoms of an abnormal condition, there is no case to record. Furthermore, if an employee has an injury or illness that is not work-related (e.g., the employee is experiencing muscle pain from home-improvement work), the administration of exercise doesn't make the case recordable either.

CASE SUMMARY

Judge Dismisses Suit Against AT By Former Collegiate Athlete

A former collegiate basketball player brought a lawsuit against a New Jersey university, the former basketball head coach and the team's athletic trainer.

The athlete, a former first-team All-American guard, claimed the coach and team's medical staff, including its athletic trainer, acted negligently by allowing him to play on a serious knee injury, worsening his condition and squelching any hopes of an NBA career.

The federal district court judge dismissed all of the athlete's legal claims; although one claim, brought by another plaintiff in the case still remains. The lone claim that was allowed to stand for the time being was a gross negligence assertion by a former guard on the women's basketball team, who joined the lawsuit after it was filed by the athlete on the men's team.

The female athlete alleges she was cleared to play after suffering a serious knee injury in practice. She said she was told at the time that she had suffered a bone bruise. However, an MRI showed more damage that required surgery. That surgery, she alleges, caused her to miss the next basketball season and hurt her chances of playing professionally. Her other claims, which echoed those brought by the male athlete, were dismissed.

The male athlete played well in a recent season in the NBA's development league, known as the G League. In rendering this decision, the judge basically noted that the athlete presented no facts to support some of his claims and didn't have legal standing to lodge the others.

Specifically, the male athlete asserted that the coach and athletic trainer acted negligently by allowing him to play on a torn meniscus in his right knee. The athlete claimed he was told that his injury was minor, and that it would not be aggravated if he continued to play for the team during the season. The athlete did suffer an ankle injury early that season and played through it, but no further knee injury was ever reported.

The athlete alleged that the school knew or should have known he was seriously injured. However, by dismissing the case, the judge, in effect, was ruling that the athlete offered no facts supporting this claim. If the athlete could have pointed to a single supporting fact, such as having an MRI done and the school not having him follow up with a physician, the athlete may have been able to claim substantive facts in his favor and the case might not have been dismissed.

The judge also noted that the original complaint was insufficient on its face as ordinary negligence can't survive an immunity defense. The athlete amended his initial complaint, the judge noted, to claim gross negligence instead of ordinary negligence, but made nearly identical assertions in the revised claim, which requires a higher standard of proof in the judicial system.

"To the extent [the plaintiff] intends to allege that he suffered his knee injury at the same time as his apparent ankle injury, or that his ankle injury was, in fact, a knee injury all along, there are no allegations to that effect and no allegations that would tend to explain how any of the defendants could have actually known the extent of his injuries," the judge stated.

On his claim of fraudulent concealment by the university and medical staff, the judge ruled that there are no supporting factual allegations which would tend to establish such knowledge.

In addition, the judge ruled that there was no basis to conclude that the university, coach or medical staff, including the athletic trainer, violated any fiduciary duty or breached any contract.

"In order to properly state this sort of 'substantial departure from policy' breach of contract claim, [the athlete] was required to 'identify a specific policy that the university breached and allege how the university breached it in a substantial way that exceeds the wide bounds of discretion afforded to universities.' This [the plaintiff] failed to do," the judge stated.

PRAT COLUMN

Best Practice Recommendations: Preventing Boundary Violations and Implementing Chaperone Policies

BY JEFF SCZPANSKI, MEd, AT, ATC, AND DAVID COHEN, MS, ATC, ESQ., NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Sexual misconduct and abuse aren't new topics in sports medicine and athletic training. From coast to coast, there are reports, trials and convictions involving adults and minors alleging misconduct by athletic trainers and other health care professionals. The issue is not limited to a particular sex or gender, city, suburban or rural location. According to a *USA Today* article, "More than 1-in-4 current or former student athletes surveyed reported being sexually assaulted or harassed by someone in a position of power on campus, compared with 1-in-10 of those in the general population, according to the survey commissioned by Lauren's Kids, a nonprofit that seeks to educate parents and kids about sexual violence."[1]

Athletic trainers often build and maintain a very strong rapport with their patients due to regular and frequent interactions. Building and maintaining trust are critical components of the athletic trainer-patient relationship. Athletic trainers, like many health care professionals, must have intimate conversations and examinations with their patients. So, what should an athletic trainer do or say and what are some best practices for an athletic trainer to protect both themselves and their patient?

The following are points of reference that serve as best practices for preventing boundary violations.

1. **Set clear and appropriate boundaries:** Establish and communicate clear boundaries with your patients from the beginning. Ensure they understand what is and isn't acceptable behavior and what you consider a boundary violation.

2. **Maintain professional relationships:** Remember that your role as an athletic trainer is professional, and your interactions with patients should remain focused on their needs. Avoid overly personal discussions or becoming too involved in their personal lives. For minors, this includes their parents and guardians as well. Avoid social media interactions or keep any interactions professional so as not to allow a possibility of misinterpretation.

   Avoid getting involved in relationships that could lead to conflicts of interest or blurring of professional boundaries. This includes personal friendships or romantic relationships with your patients. This should also include the athletic trainer's relationship with the parent or guardian of a minor.

3. **Use appropriate touch:** Be mindful of physical contact when treating or assessing patients. Before any physical contact, clearly explain the purpose and necessity of the contact and obtain consent when required. Allow the patient to ask questions before performing the test or exam and verify their understanding. Many times, a patient is caught off-guard by the location, intensity or length of an exam or component of the exam.

4. **Respect privacy and confidentiality:** Patients may share personal or sensitive information with you. It's vital to respect their privacy and keep any information shared confidential unless it poses a threat to their safety or the safety of others. Athletic trainers should be mindful of reporting laws, rules and regulations that exist if they learn of misconduct of others as that may trigger an obligation to report, even if the information was shared confidentially.

5. **Establish and enforce policies and procedures:** Develop and implement written organization-wide policies and procedures that address boundaries and appropriate conduct. Regularly review and update these policies as needed and ensure that all staff members and patients are aware of and follow them. Document training efforts and maintain training materials and records.

6. **Continuously educate yourself:** Stay updated on best practices and standards in athletic training and health care to ensure you're providing the best care and maintaining appropriate boundaries with your patients. Attend workshops, seminars and conferences to enhance your knowledge and skills.

7. **Seek supervision and support:** Maintain regular contact with a supervisor or mentor who can provide guidance and support. Discuss any concerns or conflicts that may arise and seek advice on how to handle challenging situations while maintaining professional boundaries. Additionally, it is recommended that athletic trainers develop a relationship with their employer's legal department or counsel who understands health law issues, so they have a resource when and if issues arise.

8. **Trust your instincts:** If something feels off or inappropriate, trust your instincts and take necessary steps to address the situation. Speak up and report any concerns to the appropriate individuals, such as your supervisor, organizational leadership or relevant governing bodies. There are numerous laws that require an athletic trainer to report suspected sexual misconduct. Additionally, the NATA Code of Ethics contains a duty to report unethical conduct by a fellow athletic trainer.

9. **Regularly review and reflect:** Take time to reflect on your interactions and evaluate if you have maintained appropriate boundaries. Consider seeking feedback from patients to ensure you are meeting their needs while respecting boundaries. Regular self-reflection is important for personal and professional growth.

While having a solid foundation to prevent boundary violations, there are some situations where even more caution needs to be taken,

such as with an intimate examination. A chaperone policy is recommended for those situations. References to medical chaperones began to appear in the literature in the 1970s and 1980s, with varying connotations and differing role descriptions.[2] Typically used by physicians, recommendations and requirements have been changing in the past several years due to high profile cases. Several states have implemented legal mandates that range from requiring that physicians offer a chaperone for intimate examinations (Ohio) to defining an examination of the genitals or breasts by a physician of the opposite gender without a chaperone as professional misconduct (Georgia).[2] The Athletic Training Section of the Ohio Occupational Therapy, Physical Therapy and Athletic Trainers Board has added a rule to its code of ethics related to chaperone policies which states:

"Athletic trainers shall make a reasonable attempt to either: Offer a patient the opportunity to have a third person or chaperone in the examining room or treatment setting during an intimate examination or treatment; or follow their employer's chaperone policy.

A chaperone policy shall address the following: Who can qualify as a chaperone; the type of examination, treatment situation, or care provided when a chaperone shall be offered; and chaperones shall be offered without regard to the age or gender of the patient.

In emergency situations, the chaperone policy may not apply.

Documentation shall reflect whether a chaperone was offered or declined and, if accepted, the name of the adult who acted as a chaperone.

Finally, an athletic trainer has a right to insist on the presence of a chaperone before providing care to protect the integrity of the patient and care-giver relationship."[3]

Components ATs should consider when developing a chaperone policy:

1. **Establish clear chaperone policies:** Develop a written comprehensive chaperone policy that outlines when a chaperone is required, who may serve as a chaperone and the roles and responsibilities of chaperones in athletic training settings. Clearly define their duties, expectations and appropriate conduct.
2. **Screen and train chaperones:** Screen all potential chaperones to ensure their suitability for working with patients. Conduct background checks and verify references. Provide training and education to chaperones on appropriate behavior, boundaries, confidentiality and how to handle sensitive situations.
3. **Set gender-specific guidelines:** Consider establishing guidelines regarding the presence of chaperones of the same gender as the patient to promote comfort and privacy during sensitive procedures or situations. However, respect the rights and preferences of individuals and accommodate any requests for specific chaperone arrangements.
4. **Provide clear reporting procedures:** Communicate to chaperones the procedure for reporting any concerns or potential boundary violations they observe to the appropriate authorities or supervising personnel. Ensure that they are aware of their responsibility to report any such incidents promptly and accurately.
5. **Respect confidentiality:** Emphasize the importance of confidentiality to chaperones. Instruct them on the need to maintain the privacy and confidentiality of patients and the information they come across during their duties.
6. **Regularly assess chaperone performance:** Conduct periodic evaluations or assessments of chaperones' performance and adherence to policies and guidelines. Provide constructive feedback and ongoing training to address any areas for improvement.
7. **Foster open communication:** Encourage chaperones to establish open lines of communication with patients and their families. Emphasize that they are there to support and advocate for the patients and should address any concerns or issues promptly and respectfully.
8. **Review and update policies:** Regularly review and update chaperone policies based on changes in regulations, best practices or feedback from chaperones and patients. Ensure that the policies remain relevant and effective in promoting a safe and comfortable environment.
9. **Maintain transparency:** Communicate the chaperone policies to the patients, their families and other stakeholders involved in the athletic training program. Ensure that they understand the role and purpose of chaperones and address any questions or concerns they may have.
10. **Documentation:** Maintain records related to chaperone training, discipline, policy reviews and updates. Make sure providers and chaperones understand what documentation is expected to be included or excluded in the patient's chart from both liability and privacy perspectives.

While prevention is the best course of action, it's possible in your career to suspect that a patient of yours could be suffering from sexual abuse or misconduct. If so, know there are resources available to assist you. One place to start would be the Integrity in Practice page from the NATA, **www.nata.org/practice-patient-care/risk-liability/integrity-in-practice**.[4]

A listing of some of the many state reporting laws can be found at **www.childwelfare.gov/topics/systemwide/laws-policies/state**. It should be noted that this is not an exhaustive list, and the authors recommend that every athletic trainer meet with counsel, either through their employer's legal department or privately, to get a more complete understanding of their reporting obligations and interplay between the obligation to report and the obligation to maintain patient privacy.

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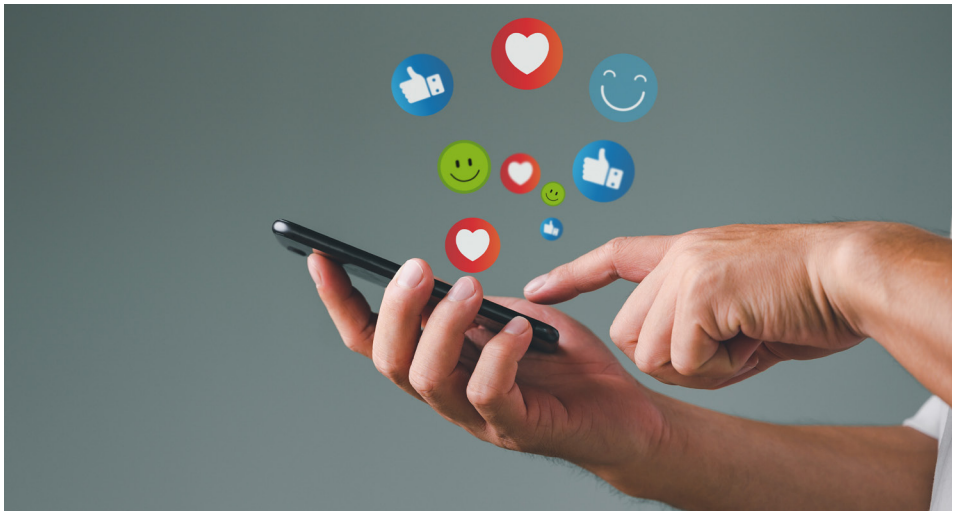
COPE COLUMN

Opinion vs. Criticism on Social Media

BY SUZANNE KONZ, PHD, LAT ATC, NATA COMMITTEE ON PROFESSIONAL ETHICS

As an individual, even more so as an athletic trainer, it's vital to have thick skin regarding life, including social media. While social media can be a useful tool to connect with colleagues, health care professionals and athletic entities, it can also be a breeding ground for criticism and negativity. In today's world, everyone has an opinion, and it's all too easy to share it online.



Opinions are like onions. They have many layers, tend to stink, irritate and make people cry. Everyone has an opinion, but many don't like to admit theirs is hurting someone. Some add criticism to their opinion as part of their interactions. As professionals in the health care-sports complex, it's essential to understand the difference between opinion and criticism.

Opinions are subjective and often based on personal preferences, experiences or beliefs. For example, you might prefer a certain type of recovery or taping method over another, and that's your opinion. Opinions don't require critical reasoning, evidence or subject matter education. Opinions can be helpful and provide valuable feedback, but should be carefully considered. Opinions matter as they provide opportunities for general discussion and civil discourse between people. However, this communication type is not looking for a change to occur.

Conversely, criticism is more objective and focused on flaws or mistakes requiring intellectual analysis. Criticism is a direct commentary of someone or something with the goal of conduct change. Criticizing the behavior of another is specifically hoping to affect a behavior modification. A classic example of criticism to affect behavior change is the yearly employee evaluations that attempt to get us to improve our performance for the good of the company. Most generally, the evaluation criticism received is positive and constructive.

While positive, constructive criticism can be useful, it's important to distinguish it from hateful or malicious comments. Negative or malicious criticism not only affects motivation and job performance – it diminishes our pride and sense of importance while increasing resentment and anger. Malicious criticism is a major issue on social media due to the personal attacks included in various interactions.

A fine line exists between expressing opinions and personal attacks. Freedom of speech and thought guarantees that we can express our opinions, so we can't restrict the sharing of opinions. Individuals have the right to express their opinions; it's important to do so respectfully and constructively. Personal attacks can be damaging and hurtful and seriously impact the targeted individuals' mental health and well-being. Cyberbullying and cyberharassment go beyond the realms of free speech. As a society, we must be more mindful of the impact our words have on others. We must build a more respectful and empathetic online community where individuals can express their opinions without fear of judgment, reprisal or malicious attacks.

The challenge for ATs is navigating social media in a way that promotes a positive image not only for themselves, but the profession, while being open to feedback. There is no right way to handle criticism, but it's crucial to approach it professionally and be willing to learn and improve. In addition to managing criticism, ATs are also responsible for upholding ethical standards in their profession. An important factor to consider is accountability. When we post on social media, we need to be aware of its impact on others and our reputations. We need to take responsibility for our words and actions and be willing to apologize and make amends when necessary. And not just the original individual but all who interact within the exchange.

Ethical behavior is essential in any field, and this includes social media. At the minimum, the NATA Code of Ethics covers microaggressive behaviors within the Preamble, Principle 1 and Principle 4, as does the NATA Professional Values. As social media continues to grow and evolve, it's a powerful tool for individuals to connect with communities to share their thoughts and opinions with a wide audience. However, with this power comes a responsibility to use social media ethically and morally.

Ultimately, social media criticism and opinion can be a powerful tool for change, but it needs to be used responsibly. We need to approach it with empathy, understanding and respect, and be willing to engage in open, civil and honest dialogue. Doing so can build a more positive and supportive online community that benefits us all.

In conclusion, ATs must be prepared to navigate the world of social media and the ethical dilemmas that go with it. While it's important to be open to feedback and criticism, it's equally important to distinguish between opinions and harmful comments. ATs must also uphold ethical standards and prioritize the athlete's well-being above all else. By doing so, they can promote a positive image for themselves and their organization and provide the best possible care for their athletes.