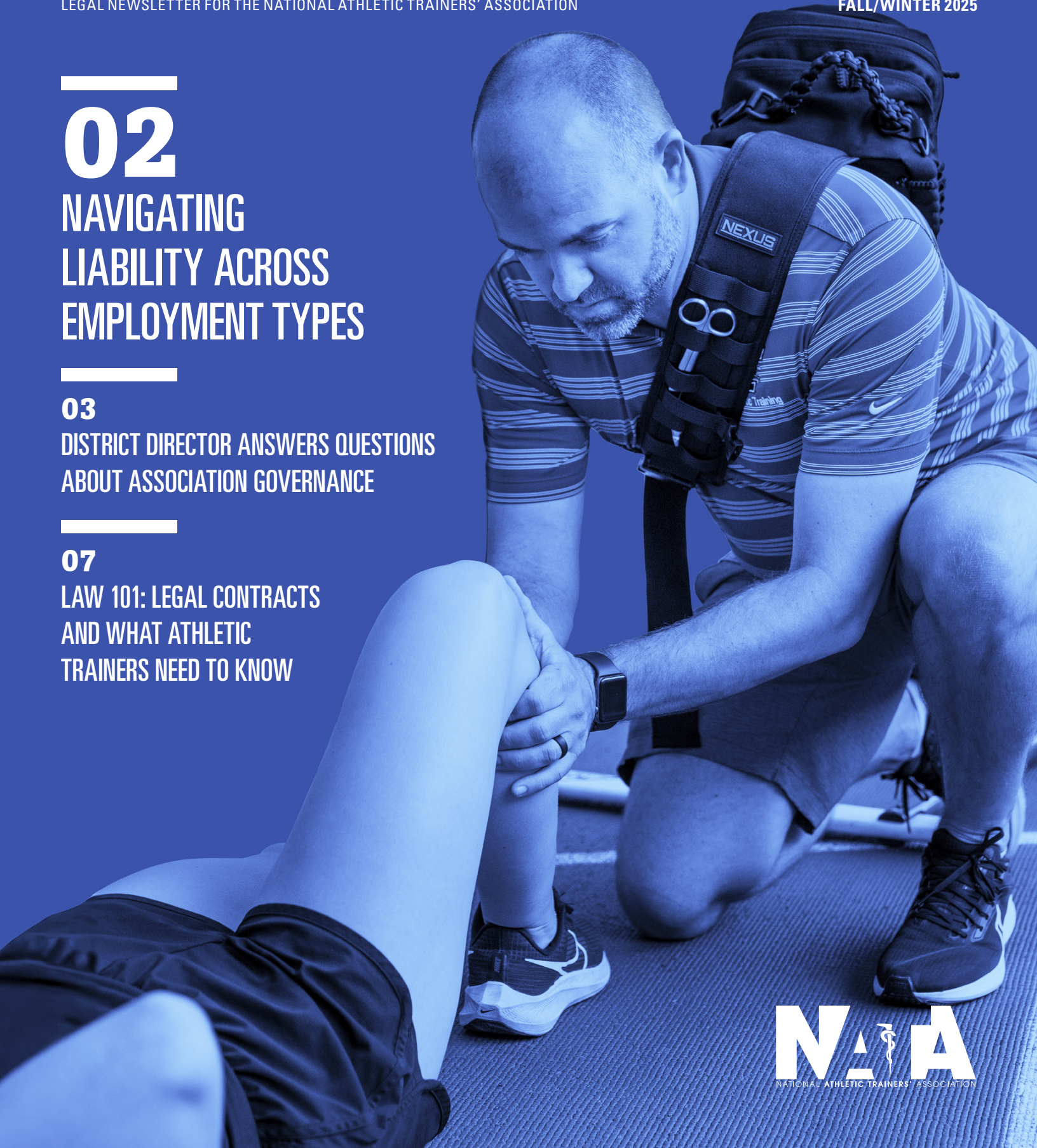
SPORTS MEDICINE

LEGAL DIGEST

LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

FALL/WINTER 2025



NATA
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, LAT, ATC; Marisa Brunett, MS, LAT, ATC; Eric McDonnell, MEd, LAT, ATC; Tim Weston, MEd, ATC; and Cari Wood, LAT, ATC; and members of the NATA Professional Responsibility in Athletic Training Committee.

Navigating Liability Across Employment Types

How athletic trainers can spot red flags and protect themselves in full-time, part-time, outreach and per diem roles

BY BETH SITZLER

The athletic training profession is a kaleidoscope of possibilities. Not only are athletic trainers found in a variety of settings, there are numerous ways in which they can be employed. Full time, part time, outreach, per diem – each offers their own set of benefits, challenges and legal and liability risks.

Full-time positions typically provide the most comprehensive benefits, including health, dental, vision and life insurance.

"If we talk benefits, if you're a full-time employee, hired directly through the organization, you get a lot more benefits and things available to you than if you were employed in any other type of employment model," said Mary Housel, MS, LAT, ATC, chair of the NATA Council on Practice Advancement Community Outreach Panel.

"When you're doing per diem on your own, as an LLC or even through an outreach company, you're not always guaranteed to have liability insurance or benefits."

While benefits vary by employment type, the protections and risks associated with each role are equally important. Athletic trainers who work part time, per diem or through outreach programs often face unique liability challenges. Understanding these risks – and how to protect against them – is essential for providing safe, effective care.

Understanding Liability Risks

No matter the employment type, before walking into any workplace, the AT must understand what they're walking into – whether that's the existing systems in place, insight into the patients to which they'll be providing care or clarity on how injuries will be handled.

"When you walk into an environment, do you already know that you have the standards in place that meet medical safety standards?" said Randy Cohen, DPT, AT, PT, who helped create the NATA Liability Tool Kit (**www.nata.org/practice-patient-care/risk-and-liability**). "Do you already have emergency action plans? Are people aware of them? Have they been educated on them? Have the intricacies of that plan already been assessed? How reliable are the systems' protections? Do you have a medical record system that you can put in everything you do? Can you walk in and provide athletic training services? Or do you have to create [these systems] yourself?

"You have to walk into a system that has you protected so you can provide medical care and not have to worry about everything around that medical care. And if you're a per diem athletic trainer, your best bet would be to create your own system or get hired by a [company] that does that."

For those in the per diem setting, they may not know what systems are in place – they may not even know the coaches, athletes or parents involved in the event for which they're providing care.

"You're going blind, and that puts you at risk because you don't know that athlete or individual's previous medical history, injury history or what kind of people you're working with – you may not have even worked the sport before," Housel said.

"That makes it even harder, and it puts you at a greater risk as well. In those kinds of situations, it's always safest to err on the side of caution, no matter if you're a first-year, fresh out of college and just got newly licensed, or if you're more experienced."

For example, Housel said, if an AT is working per diem at a youth sporting event, they should keep in mind that young athletes, whose bones are porous and growth plates haven't closed yet, are at higher risk for breaking a bone versus spraining it.

"When you're working with that population, you really have to know that that's a greater risk," she said. "So, you should err with being more cautious and advising for an X-ray versus 'This is just a sprain.' Sometimes they break things and there is no deformity, and there's just as much pain as with a sprain. So you have to know the population you're working with and the likely injuries you're going to be dealing with."

This mentality should especially apply to concussions.

"With per diem, by far, the biggest [risk] still is concussions," said Cohen, adding that it's essential that participants understand the role of the athletic trainer as the medical provider and that it's clear to all parties who can determine if a participant needs to be pulled from activity. "Are you an independent contractor who makes a recommendation to somebody and they make a choice? Or is it your responsibility to not allow somebody to continue to participate?

"With certain entities, the athletes are independent contractors, and they make the choice whether they can participate or not. You, as a medical provider, give that patient a recommendation, but they choose to participate."

Cohen said in other situations, such as when working with minors, state concussion laws may mandate that the athlete can't go back into competition if it's suspected they incurred a concussion.

"You need to know your laws, and you need to have a system in place that explains your responsibility," he said.

ATs also need to understand Good Samaritan laws and sovereign immunity, which may or may not apply to them.

"I think what it breaks down to is don't make assumptions, be informed and make informed decisions for yourself," Cohen said. "And ask those questions before you're put in that situation."

Cohen also emphasized the importance of documentation.

"We know that one of the biggest risks that you take as a health care provider is if you provide care and you don't document," he said. "So, do you have an adequate place to document? Someplace where you have accessibility to it, the patient has accessibility to it and it's stored and safely held?"

Navigating Insurance Coverage

Assumptions also shouldn't be made when it comes to liability insurance, who should have it and who is covered.

"If you're hired directly by the school, it's up to the school district to have that liability insurance taken care of," Housel said. "If you're in outreach, the health system or [physical

continued on page 04

Q&A

DISTRICT DIRECTOR ANSWERS QUESTIONS ABOUT ASSOCIATION GOVERNANCE

District Seven Director Valerie Herzog, EdD, LAT, ATC

A critical part of the administration of any association revolves around governance issues. To find out more about the key issues facing associations, such as NATA, *Sports Medicine Legal Digest* interviewed NATA District Seven Director Valerie Herzog, EdD, LAT, ATC.

Q. What are the major governance issues associations are facing today?

Working through the frequent changes to legislative requirements creates many challenges for associations. Some of the requirements have been somewhat ambiguous, so many aren't sure what changes are immediately required or when they should wait for additional guidance.

Communication can also be a challenge. Transparency is critical for an effective organization, but choosing the communication channels that will reach all the members isn't always clear. This is why NATA has chosen to communicate with its members in as many ways as possible, including digital and print news, social media and emails.

Q. What are the most important legal issues that the NATA Board of Directors and association employees should know about?

One of the most important roles for board members (district directors) is fiduciary responsibility. This means that we must make prudent financial decisions on behalf of NATA to ensure that we spend our funding wisely and foster the long-term viability of

continued on page 04

Q&A, *continued from page 03*

the profession. We must prioritize where we spend our funding to best support our members and advance the profession. We must always recognize and avoid conflicts of interest, such as entering into business agreements where one of us has a financial or personal investment.

Everyone must stay diligent in maintaining compliance with state and federal laws within our bylaws, policies and procedures and our day-to-day operations. As you can imagine, it can be challenging to keep up with every new law and regulation, which is why we retain legal counsel to keep us abreast of changes that impact NATA. For example, how we are required to protect personal information and maintain data security has changed rapidly in the past 10 years.

Q. What's the difference between an operational focus and a governance focus, and how does an organization transition into a governance focus?

Some boards make the mistake of spending too much time focusing on the day-to-day operations of the association. At NATA, this is primarily the role of staff. They develop membership campaigns, handle the logistics of the NATA Clinical Symposia & AT Expo, work with thought leaders in the field to develop educational materials, develop marketing materials and help manage the operations of each NATA committee. To maximize our effectiveness, the board should focus on governance.

This means that it should spend most of its time setting the overarching mission, vision, values and strategic direction of NATA. We provide oversight and accountability, but should do our best to "stay out of the weeds." We must hold the executive director accountable, but also allow them to manage the staff to achieve the goals identified in the strategic plan. The board should focus on the "big picture" and the association's long-term goals. Boards should also engage in

continued on page 05

NAVIGATING LIABILITY ACROSS EMPLOYMENT TYPES, *continued from page 03*

therapy] clinic that's hiring you to work in that outreach position, they're the ones covering your liability insurance, not the school district that you are contracted to. If you're doing per diem, you're pretty much on your own."

Even if an employer carries liability insurance, that doesn't guarantee the AT is covered.

"If you're a part-time employee, is a part-time employee covered?" Cohen said. "Does the insurance have malpractice insurance for you as a health care provider, or is it just general liability for an employee? If you're per diem, are you covered under that?

"A lot of times, ATs will assume they're covered because the [employer] that hired them said they have insurance. But the question is, do they have liability insurance for a medical professional or do they have general insurance? What insurance do they actually have? And are you, as an entity, covered under that insurance? Are you specifically written as an employee? Is it a per diem? Per diem may not be considered under that insurance unless it specifically states 'anybody who is hired by this entity.'"

Even if an AT hired in a full-time, part-time or outreach capacity is covered by their employer's liability insurance, they should clarify if that extends to any per diem or volunteer activities. To verify language, Housel said ATs should reach out to their employer's human resources department.

"The HR department, when you're asking about benefits, insurance, liability ... they're the people to talk to," she said. "They're not always the ones who are hiring you or interviewing you, but they're somebody you really want to talk to."

Understanding how the employer's insurance is worded will help clarify what protections – and risks – the AT has. However, to properly reduce liability, Housel said all ATs should have their own personal liability insurance.

"The thing that some people don't understand is that [in a lawsuit], they list everybody under the sun who's involved – be it the school board, the superintendent, the coaches and you, as well as the school doctor, or whoever is your supervising physician," she said.

"That's why I always advise, no matter what your work setting is, to always get your own liability insurance in addition to whatever is additionally covered. This way, you have that ability to get a lawyer that's going to watch out for your best interests and will protect you."

Keeping Yourself Protected

Beyond liability insurance, there are other ways ATs can minimize their risk. Often, it starts right in the job interview.

"Check if they're covering you liability-wise, if you're getting the benefits that you should have for health insurance as well as dental, eye and life insurance," Housel said. "See if they can contribute to that, or is there something you can get out of your paycheck, like a pension. Because even at an early stage in your career, you want to be saving for the time that you can't work."

Cohen said in addition to knowing what systems are in place – and which the AT will need to bring with them or create – the AT also needs to make sure those systems follow established best practices and standards of care.

"If they're not following them, push for them to be followed," he said. "[If anything happens,] you're going to be questioned about whether or not you're matching the medical standards, and you can't say, 'Well, they didn't buy us enough AEDs, so that's why I didn't do it.' You need to be able to say, 'This is what I did,' and if they're not doing it, you need to make sure you document that you are trying your best to get it done and there's other roadblocks that are not your doing."

Another way ATs can protect themselves is by maintaining communication with their supervising physician.

"Make sure that you at least talk to whoever your supervising doctor is," Housel said. "If it's somebody that is hired through the clinic or through the health system, make sure you meet them. Make sure you talk to them. Make sure that they know who you are so that if you need to call them – because they're supposed to be accessible when you're covering an event – they know who you are. You don't want the first time you speak to them being the first time you give them a phone call [to discuss an emergency]."

For ATs picking up per diem shifts outside of their primary workplace, Cohen recommended getting written agreements from the supervising physician for these specific activities.

Ultimately, Housel's advice is simple: "Be prepared."

"Know what you're getting into," she said. "So ask the right questions, ask about the expectations of hours, ask about being on call or answering emails at home, or how accessible you have to be when you're not on [the job]. And remember, just because [a job] is offered doesn't mean you have to take it. You're looking for the best situation for you."

CASE SUMMARY

NY Court Rules in Favor of College Wrestler's Negligence Claim Against Coach

Editor's note: To ensure readers have access to unbiased, valuable content, the real-life case summaries published in Sports Medicine Legal Digest *have been deidentified. Case summaries are shared for educational purposes to provide insight into legal proceedings and lawsuits relevant to athletic trainers as health care providers.*

While this case involves a coach, not an athletic trainer, it's instructive because of the behavior of the coach and because an AT might be called to testify in a similar kind of case.

The plaintiff in this case, a wrestler at a Division I college, sued the defendant, a coach at the university, alleging causes of action for negligence, negligent infliction of emotional distress, intentional infliction of emotional distress, prima facie tort, assault and defamation.

The plaintiff asserted that the defendant's actions as his coach caused him emotional and psychological harm. The defendant moved to dismiss the case. The New York Supreme Court (a lower court), over plaintiff's objection, partially granted the defendant's motion, dismissing the intentional infliction of emotional distress and prima facie tort causes of action.

However, as the record was devoid of evidence necessary to determine if the defendant's coaching methods were acceptable under the circumstances, the court denied the defendant's motion as to the negligence and negligent infliction of emotional distress causes of action. In addition, the court denied the defendant's motion as to the plaintiff's assault cause of action finding that, "if taken literally," the defendant's statement directing a teammate to punch the plaintiff would place the plaintiff in apprehension of an imminent battery. The defendant then appealed the decision.

"For a defendant to be liable for civil assault, the plaintiff must prove that [the] defendant intentionally placed [them] in apprehension of imminent harmful or offensive contact," the U.S. Court of Appeals in New York noted.

The plaintiff's interrogatories and deposition – which the defendant provided in support of his motion – largely portray the defendant as an intense and often angry coach. According to the plaintiff, the defendant required wrestlers to compete in what he titled "I Quit" matches. The objective of these matches was to force the opponent to tap out from pain or become otherwise physically unable to continue.

Players were often bloodied and sometimes unconscious by the end of these matches, which the plaintiff described as humiliating and dehumanizing. Although the plaintiff described a myriad of specific occasions which he alleges demonstrate the defendant's negligence, some bear specific mention, U.S. Court of Appeals in New York stated.

After a loss, the defendant screamed at the team and threw a laundry basket across the room almost hitting the plaintiff and another wrestler in the face. As a result of misconduct by another wrestler, the defendant made the team endure a particularly tough practice after which a team member became unconscious for 15 to 20 minutes with no coaching staff coming to his aid.

The defendant allowed, and seemingly acquiesced to, players engaging in fistfights during practice. For example, the court noted, a team member was known to be violent and often improperly punched his wrestling partner during practice, yet the coaching staff didn't ensure that this conduct ceased or hold him accountable. The defendant also ignored and didn't speak to the plaintiff for two weeks after the plaintiff failed to qualify for nationals.

Most notably, the court stated, the plaintiff described an incident where the defendant ordered a team member to punch the plaintiff in the face after he lost his match. When he hesitated, the defendant screamed, "Do you think I'm f---ing kidding, 'cause I'm not. Go punch [plaintiff] in the face."

The plaintiff asserts that this individual then advanced to be within five feet of the plaintiff and, with his fist clenched, appeared

continued on page 06

Q&A, *continued from page 04*

regular self-evaluation to ensure they are meeting their goals and responsibilities. Creating and maintaining a culture of governance versus operations will ensure the success of the association.

Q. How can we balance wearing both governance and operational hats within our governance structure to maintain effectiveness and prevent burnout?

NATA is so fortunate to have highly skilled and dedicated staff who can focus on the operation of the association. This allows the board to focus on governance. If either group tries to do the work of the other, everyone will become frustrated and we won't accomplish our goals. This is much more difficult with smaller associations. For example, many of our state associations don't have any staff, so the board members must manage both the governance and operation of the association.

Q. What kind of governance training is needed for association leaders?

Governance training for association leaders should include a review of the bylaws and policies and procedures; a discussion of legal issues that impact boards and associations, which can vary by state; and education about the role of board members (governance) versus the role of the staff (operations). In addition, general leadership training is recommended because we all have room to grow as leaders. Associations deserve to have highly trained board members to ensure that they are managing funds appropriately and working hard to achieve the strategic goals.

continued on page 06

Q&A, *continued from page 05*

Q. What should the relationship be between the board of directors and the executive leaders of an association?

One thing I learned in my first board of directors role is that the board only has one employee: the executive director. We are responsible for hiring them, evaluating them and holding them accountable. The executive director is responsible for all of the other employees. Boards must trust the executive director to manage the staff appropriately and deal with any issues that arise.

Q. Where should the association publish its bylaws (website/ employee handbook)?

The bylaws should be published in multiple places to ensure that anyone who needs or wants to access them can do so. This includes the website, the employee handbook and online where the board keeps other important meeting documents, such as Dropbox, Google Drive, Box, etc. (The NATA Bylaws are available on the NATA website at **www.nata.org/membership/about-membership/member-resources/nata-bylaws**.)

Q. How does an association assure that roles and expectations of board members are clearly defined and documented to facilitate productive meetings and decision-making?

Onboarding of new board members and regular training of all board members is critical to ensuring that the board is productive. As I mentioned earlier, the board should also engage in regular self-evaluation to ensure it stays on task and doesn't get mired in operations.

continued on page 07

CASE SUMMARY, *continued from page 05*

as though he was going to strike plaintiff. When this teammate didn't do so, the defendant marched away and appeared irritated. Despite the plaintiff competing in and winning a match later that day, he was distressed by this incident.

The plaintiff noted that defendant had a lack of respect for the individuals he coached and employed tactics akin to "psychological warfare," as he intentionally taunted and instilled fear in members of the team. During his deposition, the plaintiff additionally described the mental and emotional toll that resulted from his time on the defendant's team.

During his deposition, the defendant attempted to explain these incidents and maintained that wrestling is a violent sport during which emotions are escalated and physical altercations may occur. The defendant described "I Quit" matches as a typical practice method meant to address the fundamental nature of not quitting.

This method wasn't only used by the coaching staff at the university, but also in the defendant's coaching experience at other universities. As to the specific incidents outlined above, the defendant acknowledged that he did flip a laundry basket but did so to get the team's attention, and the basket didn't hit any person.

The defendant explained that more physically grueling practices were utilized on approval by administration as punishment when players breached the team's conduct policy and expressly denied that any player passed out as a result of these practices. Practice matches grew heated due to the nature of the sport but, according to the defendant, staff intervened to deescalate the situation as quickly as possible when this occurred. However, a player known to be violent was removed from the team. The defendant denied having ignored any wrestlers and, regarding the November 2017 incident, indicated that he directed the teammate to punch the plaintiff to motivate him.

In addition, the defendant claimed he told the teammate to "knock some sense into" the plaintiff. However, his statement wasn't literal, and the teammate didn't punch the plaintiff.

The defendant additionally provided the deposition testimony of an athletic trainer and an assistant coach who said that the "I Quit" matches were consistent with coaching methods in their experience. Moreover, the athletic trainer said it was clear to him that the defendant was speaking figuratively when he instructed the teammate to strike the plaintiff. This teammate was deposed and verified many of the incidents the plaintiff described. Moreover, the teammate acknowledged that the defendant did scream at him to punch the plaintiff in the face, but he didn't act on the defendant's demand and didn't approach the plaintiff with his fist clenched.

While a claim of negligent infliction of emotional distress would fail where the plaintiff alleges no negligent conduct in the pleadings, the court reasoned, the plaintiff's cause of action in this respect was supported by allegations of negligent conduct, which were elaborated on in the plaintiff's deposition testimony. Thus, the defendant's motion for summary judgment dismissing that cause of action based on a failure to allege negligent conduct was properly denied.

Altogether, the court said, viewing the evidence in the light most favorable to the plaintiff, the defendant failed to eliminate all material questions of fact regarding the negligence claims. Specifically, the defendant's proof failed to establish that his actions didn't breach his duty to keep the plaintiff safe from physical or emotional harm. Additionally, the proof failed to establish that any breach on the defendant's part didn't result in unreasonably endangering the plaintiff's physical safety or causing him to fear for his physical safety, according to the court. As such, the appeals court rules, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the plaintiff's claims based on negligence.

Finally, regarding the plaintiff's assault cause of action, the defendant submitted contradicting deposition testimony describing the incident. Therefore, by his own submissions, the defendant failed to satisfy his burden of proof by eliminating all material questions of fact and establishing that he didn't intentionally place the plaintiff in fear of an imminent battery as a matter of law. As such, the court ruled, the Supreme Court properly denied the defendant's motion for summary judgment dismissing the plaintiff's assault cause of action. The defendant's remaining arguments, to the extent not specifically addressed, have been found to be either unpreserved or without merit.

LAW 101

Legal Contracts: What Athletic Trainers Need To Know

At one point or another in your life, especially in your career as an athletic trainer, you will be asked to sign a contract. Or, depending on your role, you might ask someone else to sign a contract that you or your attorney have drafted.

In any of these cases, it's important to know what elements go into a legal contract. Simply signing a document that says "contract" in the heading doesn't mean that you have, in fact, entered into a legal contract.

You should also understand that a written contract doesn't have to be dozens of pages long. A completely legal contract might only be several sentences in length. A legally binding contract may be based on anything from an oral agreement to help an athlete rehabilitate from a knee injury to a complicated employment contract that stipulates in excruciating detail dozens of ways your employment might be terminated for cause.

In this Law 101, we will discuss the essential elements for transforming agreements into legally binding and enforceable contracts. There are three essential elements that are necessary to produce a binding contract.

No. 1: An Offer

All valid contracts are formed only when there is a mutually understood offer and acceptance on the part of both parties to an agreement.

"Duh," you say.

Well, the issue is that there must be a mutual understanding of the offer. For example, an offer to provide strength training as needed may not be a clear enough offer when compared to, for example, one that states that you will provide strength training twice a week. In general, offers may be communicated in writing, verbally or through the offeror's conduct. However, contracts subject to the fraud statutes must be in writing.

There are sometimes problematic issues that arise in terms of offers. For example, an offer may be bound by time restraints. Simply put, offers may not remain open indefinitely. Some offers may terminate automatically, such as when the offeror stipulates a time limit for acceptance, or the offer will terminate after a reasonable period. For these purposes, what constitutes a reasonable time will depend on the circumstances, such as the nature of the offer, how it was communicated and industry practices.

Offers can also expire if the accepting party makes a counteroffer that, in effect, rejects the original offer. Offers also can be terminated if either party dies or is incapacitated.

An offer also can be structured to include conditions on which it will terminate. For example, a contract can include a clause stating that the offer will expire if it isn't accepted by a specific date.

Do you think this is an offer? "I'm considering opening my office next month and will think about charging $100 an hour for treatment." This isn't an offer because the offeror isn't really making a legal commitment.

continued on page 08

Q&A, *continued from page 06*

Q. If a board member isn't attending meetings and/or not contributing sufficiently, can they be removed?

Every association should delineate how board members are elected and how and why they could be removed, if needed. This could result from not attending meetings, but could also include unethical behavior. Some also include provisions to allow board members or officers to be removed if they die or become mentally or physically incapacitated.

The second part of the question, relating to whether or not a board member is contributing sufficiently, is much more subjective. If this were added to the board governance documents, it would require some details to explain the level of contribution that is expected.

Q. How can an association prevent frequent board changes from being a destabilizing factor?

Boards should work on appointment timelines to ensure that a majority of the board won't roll off in the same year. Try to stagger appointments so that no more than 30% to 40% of the board could turn over in a single year. This can get a little tricky with district associations because they often include the president of each state in the district. Each state may have different terms of office for its president, and there is no guarantee that a president will get elected for a second term.

Q. What strategies can be employed to engage board members more effectively and foster a proactive approach to governance?

Most individuals have some type of leadership experience before joining a board of directors. However, board

continued on page 08

Q&A, *continued from page 07*

service can be very different, especially if the association also employs staff. We should be intentional with onboarding new board members, providing regular training to all board members and engaging in regular self-evaluation. This will help the board to stay focused on their roles and goals.

Q. What are the most robust processes to implement for board dispute resolution?

One of the best ways to deal with a problem is to prevent it. As athletic trainers, we spend a lot of time on injury prevention, so this skill is well-honed. Preventing disputes includes transparency, regular communication and shared decision-making. While many boards have an executive committee of the board that typically includes the president, vice-president, treasurer and sometimes the secretary, this group shouldn't make decisions on behalf of the board. This group should discuss key issues to bring to the board for debate and a vote.

However, even the most well-trained and functional boards will have conflicts on occasion. In these situations, open and calm communication is key. Board members and leaders must be open to criticism and create safe spaces for conflicting views. Whenever possible, disputes between two individuals should be dealt with privately rather than in front of the entire board or in public spaces.

Q. Should associations pay board members and, if so, what are the best practices for implementing compensation?

Most board members are volunteers, although, they often receive reimbursement for travel expenses to attend board meetings. Serving our profession

continued on page 09

LAW 101: LEGAL CONTRACTS, *continued from page 07*

In addition, preliminary negotiations that simply express a willingness to discuss potential terms or consider a future agreement aren't considered legally binding offers.

No. 2: An Acceptance

In addition to the offer, there must be clear-cut acceptance by the other party to have a legally binding contract, as it signifies the parties' mutual assent to agree to the terms.

Acceptance generally is communicated in writing, verbally or through the offeree's conduct unless the offeror mandates a specific manner of acceptance. However, there is an important distinction between bilateral and unilateral contracts.

In a bilateral contract, the offeror makes a promise to the offeree, and acceptance occurs when the offeree makes a corresponding promise to the offeror to reciprocate with their own commitment. For example, in an employment contract, the employer promises to pay an employee a specific salary and benefits package in return for the offeree's services, and the employee accepts the offer by promising to provide the services according to employment agreement.

In a unilateral contract, the nature of the offer promises something in return for the performance of a specific act. The performance of that act is deemed to be the acceptance of the offer. For example, if you promise and then pay your plumber $175 to fix your dishwasher, you have accepted the offer.

No. 3: Consideration

Consideration requires that both parties in a contract provide something of value. This mutual exchange binds each party, ensuring the enforceability of the agreement and distinguishing it from just a promise that isn't enforceable.

In bilateral employment contracts, for example, the promise to pay a certain salary for the employee's services constitutes consideration on part of the employer. In turn, the promise to perform those services per the terms of the offer operates as consideration on part of the employee.

Consideration also occurs when a party promises to refrain from any action or not exercise a right they are legally entitled to. For example, an author with a potential copyright infringement claim against a website may agree not to pursue the claim in return for a percentage of the site's revenue generated by the author's content.

Beyond the three essential elements of a legally binding contract, it's important to note that a contract isn't valid unless all parties involved have the capacity to understand the terms and consequences of the agreement because, as mentioned above, the formation of a contract relies on mutual assent, which an incapacitated party can't reach.

In addition, a contract is only binding if both the subject matter of the contract and the actions it requires are legal. Any contract that involves activities that are illegal, unethical or against public policy isn't enforceable. For example, a contract for the sale of illegal drugs wouldn't be enforceable because the subject matter of the contract is illegal.

Finally, it's important to note that the principles of contract law vary significantly across jurisdictions. Bottom line: If you're uncertain whether you have entered into a legally binding contract, you should consult an attorney. $

PRAT COLUMN

Is It Too Late Now To Say Sorry?

Understanding apology laws in athletic training clinical practice

BY MATT MILLS, EdD, LAT, ATC,
NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Imagine this scenario: During a rehab session, an athlete sprains their ankle due to an improperly secured piece of equipment. The athletic trainer conducting the rehabilitation session immediately attends to the injury and, while assisting the athlete, says, "I'm so sorry this happened, I should have double-checked the equipment." Later, the athlete's parents expressed concerns about negligence and hinted at seeking legal action.

This moment, where compassion and accountability intersect, highlights the importance of understanding medical apology laws. These

laws can protect health care providers, such as athletic trainers, when they express sympathy, but they can also blur the lines between empathy and liability.

Before the implementation of apology laws, providers were commonly advised to avoid any statements of regret at any time, which was theorized to increase the risk of medical liability lawsuits. Physician groups were consistently trained to limit their communication with patients, which directly contrasts with the ethical concepts of respect for autonomy, non-malfeasance and beneficence. Furthermore, subsequent analysis and interviews with patients exposed that the failure to apologize increased the likelihood of lawsuits as patients who received apologies felt providers had recognized their concerns and, thus, were less likely to pursue legal action.

Medical apology laws, sometimes known as "I'm sorry" laws, have existed since 1985, when Massachusetts passed the first statute protecting medical providers from civil liability directly due to uttering statements of regret following a poor patient outcome. These laws can be either complete or partial apology laws, where complete apology laws protect a more expansive version of expression. For example, Arizona state law protects "any statement, affirmation, gesture or conduct expressing apology, responsibility, liability, sympathy, commiseration, condolence, compassion or a general sense of benevolence" from being admitted as evidence. Conversely, a partial apology law may protect statements of regret only while maintaining the admissibility of statements that express liability, which provides far less protection for providers. Critically, medical apology laws provide protection because the statement of regret isn't admissible as evidence in a civil trial.

The responsibilities of athletic trainers frequently place ATs in critical decision-making positions as there are common situations in which ATs are forced to make rapid decisions in a challenging clinical environment where errors and poor outcomes can occur. This can include errors resulting from treatment protocols, communication with patients or their parents, or injuries due to a mistaken diagnosis or poor clinical outcome. When suboptimal outcomes occur, the athletic trainer's natural inclination is to provide comfort and empathy to their patients, which may provide increased liability exposure. However, failing to provide such reassurance may be detrimental to their relationship and negatively impact their reputation moving forward, creating a conflict between potential legal exposure and the AT's professional ethics and moral responsibility.

Due to the wide variation of state apology laws, it's critical for athletic trainers to research whether their state has legal protections for medical providers who express feelings of remorse or sympathy for patients who have sustained a negative outcome following a medical encounter. Currently, 34 states and Guam have an "apology law" on the records (see the above info box for a list). This should include whether the apology law provides a more comprehensive protection than a more limited protection for civil liability. It's also critical for ATs to recognize that even comprehensive apology laws frequently only prohibit the expression of remorse as admissible and that other items may be introduced as evidence demonstrating fault for malpractice. Additionally, athletic trainers should examine the verbiage of who is protected by apology laws as some states restrict the protection to specific medical providers or those who are licensed by a specific board.

If athletic trainers want to start leveraging the power of apologizing for suboptimal outcomes, they must consider an approach that both provides the patients with the desired empathetic response and protects the provider

continued on page 10

Additional Resources:

- State-by-state apology law statutes: **www.ncsl.org/financial-services/medical-professional-apologies-statutes**
- "Apology Laws and Malpractice Liability: What Have We Learned?" by Adam Fields, Michelle Mello and Allen Kachalia: **qualitysafety.bmj.com/content/30/1/64**
- "Saying Sorry – Should a 'Safe Space' Be Created To Allow Effective Communication Between Healthcare Practitioners and Aggrieved Parties After an Iatrogenic Event in South Africa?" by Muhammed Siraaj Khan and Michael Laubscher: **journals.co.za/doi/pdf/10.7196/SAMJ.2024.v114i8.1881**
- "The Role of Apology Laws in Medical Malpractice" by Nina Ross and William Newman: **pubmed.ncbi.nlm.nih.gov/34011538**

Q&A, *continued from page 08*

definitely takes time and energy, but what we get back is so much more. The connections, friendships, training and deeper knowledge of the issues facing the profession are invaluable. Many association leaders have used this experience to gain promotions at work into paid leadership roles.

However, if a position is excessively time-consuming, such as the role of president, it may be prudent to buy out some of the individual's time with their employer to ensure they can devote enough time to be effective in the role.

If the board meeting is held in conjunction with a conference, board members are typically given free registration. These benefits are typically more than adequate to compensate an individual for their service. There are some organizations that compensate board members, but those typically have much larger revenue streams than membership associations.

Q. Anything else to add?

Serving on boards of directors has helped me grow as a leader and has helped me build my network immensely. I have developed lifelong friendships that I will always cherish. It can be a lot of work at times, and we often don't agree on everything. Working through these challenges is incredibly rewarding as we see the impact on the association, our profession and individual members.

If you're interested in serving on a board, get involved with committee service first and then take the leap when you feel ready, even if you don't feel completely ready. The other board members will provide you with the training you need to serve in the role effectively. The experience will benefit you for many years to come.

from increased legal exposure. Athletic training education programs should strongly consider leveraging simulation to allow athletic training students to practice providing empathetic and legally sound responses to a poor outcome as that can allow for a more appropriate response following authentic clinical scenarios. Additionally, athletic training clinical practice locations should consult with their legal counsel's office to develop appropriate and standardized approaches to apologies in athletic training clinical practice.

In conclusion, understanding and effectively applying medical apology laws is critical to modern athletic training, blending the essential elements of empathy, ethics and legal responsibility. These laws are a foundation for fostering trust and open communication between athletic trainers and their patients, particularly when negative outcomes or errors occur. Medical apology laws promote a patient-centered approach that aligns with the core ethical principles of respect, beneficence and non-malfeasance by allowing providers to express sympathy and remorse without fear of increased liability.

However, the variability in state laws regarding the scope and applicability of these protections underscores the importance of athletic trainers staying well-informed about their local statutes. ATs must understand whether their state's apology laws provide partial or complete protection and recognize that such laws often limit admissibility and applicability. Proactive measures, such as integrating legally sound empathetic communication into athletic training education and clinical practice, can equip professionals with the skills to navigate these challenging scenarios effectively.

Moreover, clinical settings can benefit from consulting legal counsel to establish standardized policies on apologies, ensuring consistency and legal compliance. Simulation-based training programs emphasizing real-world scenarios of medical error disclosure can prepare athletic trainers to deliver compassionate, yet legally cautious, responses during critical moments. By combining legal awareness with a commitment to ethical practice, athletic trainers can strengthen patient relationships, build professional credibility and contribute positively to the evolving health care landscape. Through these efforts, they demonstrate that accountability and compassion can coexist, ultimately elevating the profession's standards of care and trust.

CASE SUMMARY

Athletic Trainer Added as Defendant in Federal Lawsuit Against University

Editor's note: To ensure readers have access to unbiased, valuable content, the real-life case summaries published in Sports Medicine Legal Digest *have been deidentified. Case summaries are shared for educational purposes to provide insight into legal proceedings and lawsuits relevant to athletic trainers as health care providers.*

An athletic trainer has been added as a defendant in a federal class action lawsuit filed by former basketball players alleging sexual abuse by a former team physician.

According to a press release from the law firm representing the plaintiffs in the lawsuit, the amended complaint now includes the university's men's basketball athletic trainer as a defendant in addition to the defendant university.

Although the former team doctor isn't a defendant in the case, he is at the center of the allegations. In the original suit, the university is accused of having knowledge of the physician's actions and failing to act on them. The plaintiffs consider this to be a Title IX violation.

The plaintiffs assert that "they were routinely subjected to medically unnecessary, invasive and sexually abusive rectal examinations by the team's physician."

The amended complaint alleges that the athletic trainer had knowledge of the doctor's actions and continued to assign players to him for physical examinations where abuse allegedly occurred.

According to the amended complaint, the athletic trainer had actual knowledge of and participated in the physician's constitutional violations by continuing to assign student athletes to the physician for physical examinations with knowledge that, when he did so, the physician would sexually assault those students.

The university didn't comment on the amended complaint or the ongoing litigation.

In addition, another former university player has added his name to the lawsuit as a plaintiff.

"I am proud to stand up on behalf of my former teammates and other [basketball players] to seek justice for the sexual abuse we endured as members of the [team]," the former player said in a press release.

The amended complaint states that the added player was assigned by the physician for the physical examination that was required by the athletic department for all student athletes.

The complaint alleges that the athletic trainer laughed at the added player about the digital rectal examinations given by the physician and that jokes were made at his expense and other freshmen at the time of the alleged abuse.

"[The athletic trainer] was at all times relevant herein aware that the digital rectal examinations routinely performed on young, healthy collegiate athletes were medically unnecessary because [he] has worked as a medical professional in the sports medicine field [for a long time]," the complaint states.

The suit claims that the university and athletic trainer provided their "stamp of approval" by contracting the team physician.

The amended complaint states that the added player didn't suspect that the physician's examinations constituted sexual misconduct until he discussed the exams with his cousin, an unnamed player who also played for the basketball team and who was also subject to alleged abuse. Shortly after, the added player learned of the class action suit and added his name to it.

COPE COLUMN

Athletic Trainers and the Ethical Practice of Per Diem Work

BY PAUL G. RUPP, MS, LAT, ATC, NATA COMMITTEE ON PROFESSIONAL ETHICS CHAIR

There are more opportunities for athletic trainers to work per diem events. Because of this, there are more companies to support athletic trainers in finding these opportunities by posting or advertising these events.

Even though the event is a per diem job, the AT still has an obligation to work the event ethically. It's vital that the AT communicates with the organizer about many different issues regarding the venue, athlete population and liabilities that need to be addressed to provide professional care in an ethical manner. Before I go any further, I want to make it clear, I am not a lawyer or a financial planner/CPA. What I've provided below is to help educate readers, who are encouraged to seek out legal advice from a lawyer.

Per diem work provides ATs an opportunity to earn extra income (in some instances, their only income) as well as provides medical care to athletes who may not normally have anyone to provide medical care.

Quite often, an AT will get a call or email 48 to 72 hours prior to an event from the organizer saying something along the lines of, "I'm in search of an AT to cover a match from 7 to 9:30 p.m. Tuesday, July 8, at XXXX High School. Bring your own kit; I will pay $50 per hour through Venmo. Ice and dinner provided."

To the AT, this sounds like a nice opportunity to make and extra $150 – but are you prepared to work it? While per diem work offers professional and personal advantages, it introduces significant ethical questions, primarily concerning continuity of care, legal concerns and maintaining the standard of professional care, which necessitate a proactive and ethically grounded approach from the athletic trainer.

Principle 1 of the NATA Code of Ethics states, "Members shall practice with compassion, respecting the rights, well-being and dignity of others." Principle 4 states, "Members shall not engage in conduct that could be construed as a conflict of interest, reflects negatively on the athletic training profession, or jeopardizes a patient's health and well-being."

While providing care at an event, an AT may see an athlete for the first and last time. There are many questions about a patient's past medical history that can affect the course of a treatment plan. There should be physicals or at least the athletes' medical histories provided for the AT to review and have access to. The organization should ensure every athlete is safe to participate. When injuries do happen, there should be a structure or mechanism available to appropriately document the injuries and care that was provided. There should be a continuation of patient care either by the AT or another medical provider they refer the patient to. That other medical provider may be a doctor, chiropractor or their home AT. Communication should be made regarding the injury and care that was provided so the follow up care is appropriate.

It's also important that the AT providing athletic training services is aware of state practice acts and current laws regarding medical care that could affect the treatment provided or athletic training services. Depending on which state the company that is sponsoring the event is based in, it's important for the company to know what services the AT can and must provide. It's essential so that everyone involved has the same expectation of services. The AT must know the state's laws and requirement for concussion care, cardiac care, heat illness, medicine distribution (including over-the-counter medications) and any other law that covers health-related issues.

The NATA Code of Ethics Principle 3 states, "Members shall maintain and promote high standards in their provision of services."

To provide high standards of athletic training care, the AT, in knowing state laws, must have the necessary equipment available to provide the expected services. When asked to work per diem, this is a cause for conversation with the organizers. Is an AED available? Is an ice machine available (not just a small cooler of ice)? Is there a dry shaded/air-conditioned space available? Is there a cooling tub/tarp? How many ATs are hired for how many fields? Is a cart available? What communications are available? What record-keeping tools are available (and where are the records kept)? Is there an overseeing physician? Are there existing emergency action plans for the sites? These are just some sample questions that need to be asked.

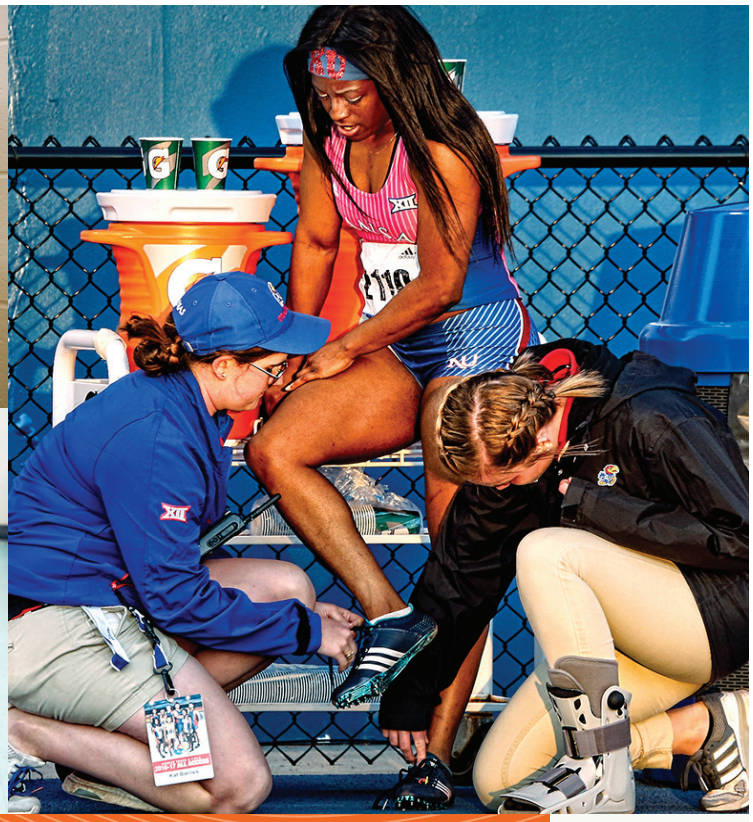
As state laws dictate what must be done in certain medical cases, NATA position statements and Board of Certification for the Athletic Trainer standards of care add another layer of expectation of athletic training care. Variables, such as the sport (possible protective equipment), weather, location (indoor or outdoor; rural or inner city, which may influence EMS response time), number of athletes per AT, number of fields (or courts) per AT, distance between playing fields, playing surfaces, access to facilities and more will dictate the necessary equipment. If the state in which a tournament is being held has a law that AEDs must be accessible, does the organizer have AEDs for the ATs? Are their AEDs mounted in the building or adjacent where the event is taking place? Does someone have access to the AEDs and their location?

When working per diem events presents legal and ethical challenges, that can be overcome by asking the right questions and being prepared. The AT should have their own liability insurance and may want to consider creating a limited liability company (LLC) in their name. There are legal and financial benefits to an LLC (again, I'm neither a legal or financial expert).

The AT may need to purchase their own AED, cooling tubs/tarps, splints, rectal thermometers, etc., to be able to effectively provide athletic training care as the organization hiring them will likely not have such equipment. If the AT is doing per diem work on the side, separate from a full-time AT job, it would be inappropriate to utilize the equipment/supplies from the full-time job without permission or paying for those goods used from the full-time employer.

It would also be inappropriate to just assume that the overseeing physician would cover the AT in the per diem role. There should be a discussion there as well. The physician may be fine overseeing the AT in the per diem role, but may want a different standard operating procedure.

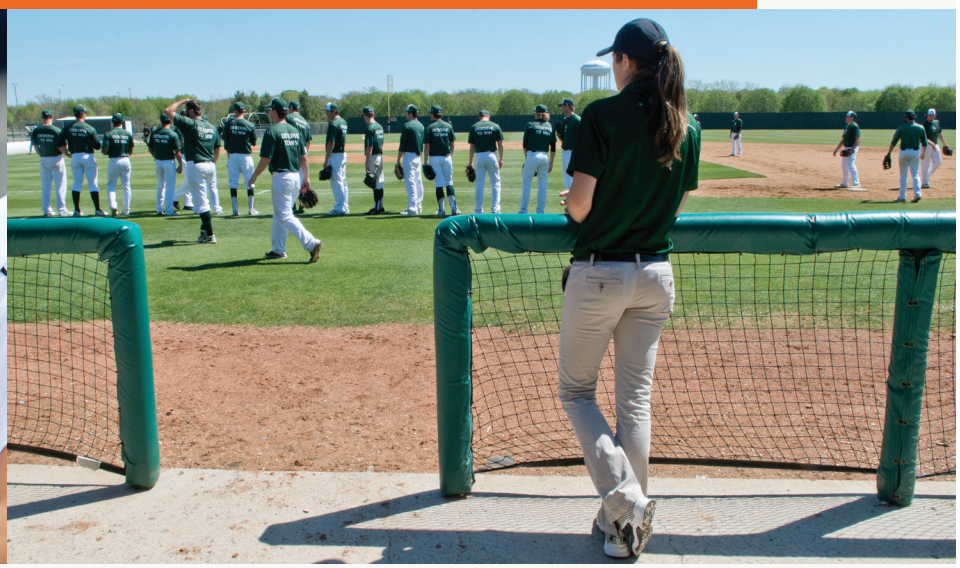
Navigating these issues requires an AT to be proactive, prepared and committed to placing patient well-being over all other considerations. When practicing athletic training, and putting oneself out in that role, the AT must always provide the highest standards of care. Communications with the organizers, ensuring contractual agreements are appropriate and practicing ethically are essential for athletic trainers to ensure they can provide exceptional and safe care in the per diem setting.



VIEW COVERAGE OPTIONS

LIABILITY COVERAGE THAT WORKS AS HARD AS YOU DO.

proliability®



Call for a Quote **1-800-375-2764** Or Visit **proliability.com/NATA25**