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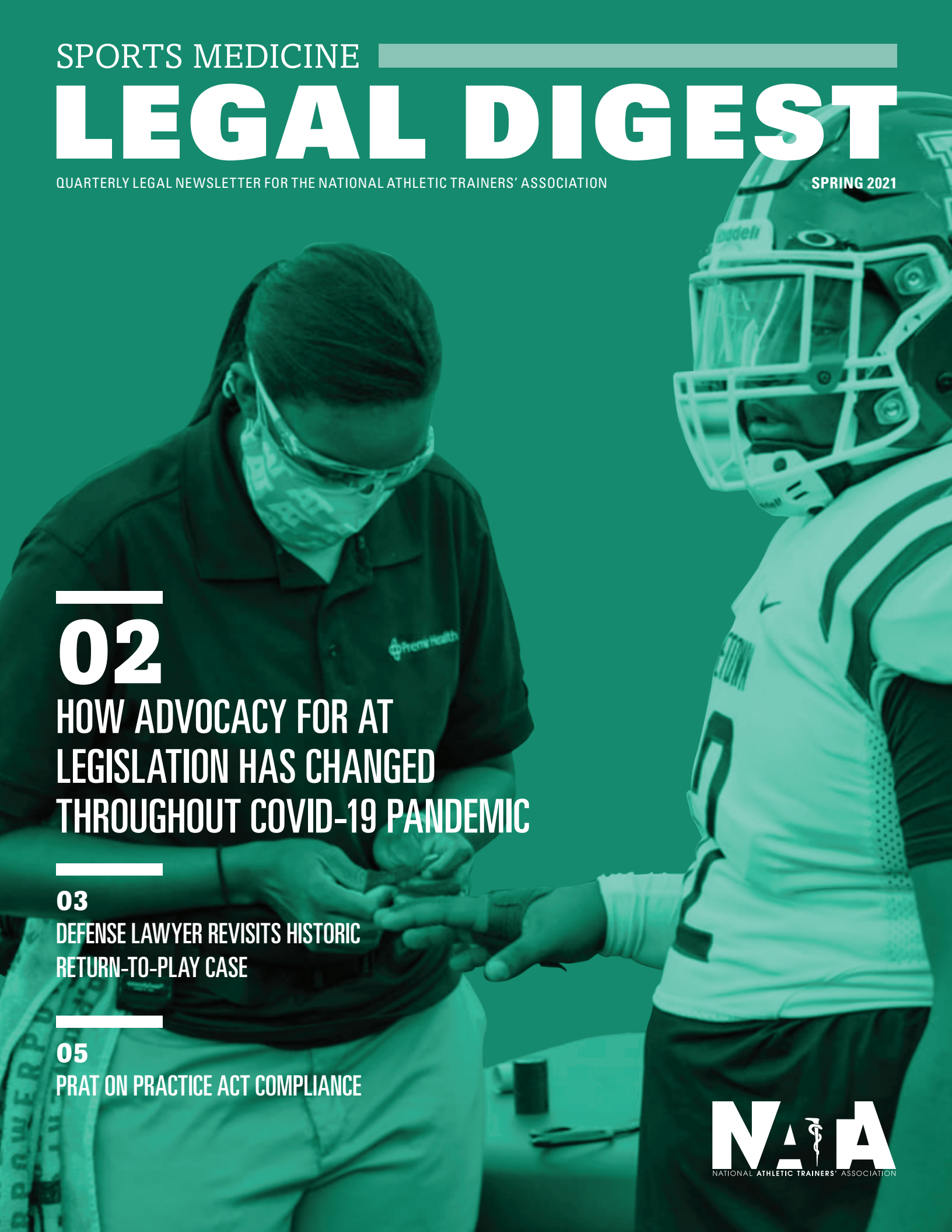

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NATA
NATIONAL ATHLETIC TRAINERS' ASSOCIATION

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How Advocacy for AT Legislation Has Changed Throughout COVID-19 Pandemic

After one year, efforts to legally support AT care have gone through three phases

BY CLAIRE HIGGINS

With the arrival of the spring season, the COVID-19 pandemic completes its first trip around the sun. After 12 months of navigating a global health crisis day by day, it's important to step back and examine the strides athletic trainers have made for the profession through legislation that recognizes athletic trainers as the essential health care providers they are.

Athletic trainers, while working on the front lines and in high-risk settings, have continued to advocate in their states to be included in temporary legislation as essential health care workers. With this delegation, athletic trainers have been a part of screening for coronavirus, included in the first tier of Americans to receive vaccinations in some states and, most recently, ATs in some states are administering the coronavirus vaccine throughout their communities.

Through collaborating and building strong relationships with administration in local health systems and health departments within their states, leadership in many state associations have successfully ensured athletic trainers have been available to their communities to provide care during every phase of the pandemic, with the support of state law, executive orders and mandates.

Because state practice acts vary from state to state, advocacy can look different, but increased recognition for athletic trainers and their skill sets is often the common goal. Throughout the pandemic, athletic trainers have worked through three phases of advocacy and, now, prepare to utilize their success in front-line health care worker roles to support future legislation recognizing athletic trainers at the state level.

Phase One: Define Athletic Trainers as Essential Health Care Workers

At the onset of the pandemic, athletic trainers across the country shifted into different settings to support the need for more health care providers to stop the spread of the coronavirus. Secondary school athletic trainers transitioned to hospitals, screening patients, doing triage, delivering prescriptions through outpatient services and assisting with home exercise programs, among many other functions.

As their duties as health care providers began to expand, many athletic trainers were in need of an executive order or mandate that expanded their state practice act to allow them to practice in a wider capacity during the pandemic. In Pennsylvania, Gov. Tom Wolf signed an executive order in early May 2020 giving health care providers protection against liability for good faith actions taken in response to the call to supplement the health care provider workforce battling COVID-19.

"It was a positive shock to us," said Tayna Miller, MS, LAT, ATC, Pennsylvania Athletic Trainers' Society (PATS) Government Affairs Committee chair.

Prior to the pandemic, PATS had been working to expand the state's practice act to reduce the limitations on ATs' patient population. Specifically, the executive order from Gov. Wolf removed restrictions on population, allowing ATs, in addition to dentists, oral surgeons, chiropractors and podiatrists with delegation from a supervising physician combatting COVID-19, to be more efficient.

These actions also relaxed supervision requirements for health care licensees, such as ATs, and allowed them to perform acts that, in the ordinary course of practice, they would not be authorized to do. This action is slated to remain in effect for the duration of the pandemic as it has already been extended multiple times since May 2020.

"During the pandemic, we no longer have to deal with the restriction on population," Miller said. "It allowed practitioners to be able to deal with whatever is handed to us."

Phase Two: Include ATs in First Round of COVID-19 Vaccinations

By the fall of 2020, the U.S. government had approved COVID-19 vaccinations and states were required to outline vaccination plans for all citizens. Many states took a tiered approach, prioritizing essential health care workers and senior citizens ahead of the remaining population.

In many states, although athletic trainers were being recognized as essential in the fight against COVID-19, their spot on the waiting list for a vaccine was not abundantly clear. In November 2020, NATA sent a letter to the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices on behalf of members advocating for athletic trainers to be included on the list of health care providers considered for early vaccination. Read more about NATA's advocacy for AT vaccine priority on the NATA Now blog at **www.nata.org/blog/beth-sitzler/nata-advocates-vaccine-priority**.

In some states, such as Missouri and New Hampshire, athletic trainers were already identified as health care providers in their practice acts, so their inclusion on priority vaccination lists was more defined.

Missouri Athletic Trainers' Association (MoATA) President Rob Carmichael, MA, LAT, ATC, attributed learning about their inclusion to "a bit of luck." As he was preparing a letter of support for AT vaccinations from the MoATA and NATA to send to Gov. Mike Parson, Carmichael was notified by the Missouri National Guard that ATs were included in the state's tier 1A priority vaccine list.

Carmichael credits this recognition to an update in the Missouri state practice act that defines athletic trainers as health care providers. The updates took effect in August 2020, and Carmichael considers that clarification to be a large part of recognition of athletic trainers during the pandemic.

In initial communication from the governor's office, athletic trainers in New Hampshire were not included on the priority list for vaccinations, according to former New Hampshire Athletic Trainers' Association President Sandy Snow, MS, LAT, ATC.

Instead, she received the notification from the lobbyist the association works closely with and shared information that supported why athletic trainers should be included, based on their patient population and the patient-facing

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Q&A

DEFENSE LAWYER REVISITS HISTORIC CASE ON RETURN-TO-PLAY DECISION-MAKING

Eric Quandt

Who should determine whether a student athlete is physically eligible to play on an NCAA athletic team? The landmark decision in the case of Knapp v. Northwestern University stated "medical determinations of this sort are best left to team doctors and universities as long as they are made with reason and rationality and with full regard to possible and reasonable accommodations."

This decision in 1996 paved the way for team physicians and collegiate athletic trainers to lead decision-making in return-to-play cases.

Because athletic trainers are involved in exclusion and return-to-play considerations with student athletes in the collegiate setting, the Knapp v. Northwestern case is considered one to know.

Eric Quandt, principal of Quandt Law in Chicago, was one of several attorneys representing Northwestern University in the case. Quandt is considered a leading lawyer in medical malpractice defense litigation, and his perspective on the historical Knapp v. Northwestern case, specifically the history of it and how it impacts athletic trainers, is critical for ATs.

Q. What is the importance of this case for athletic trainers?

The appellate court utilized a team physician and medical judgment model for decision-making. This is certainly consistent with relevant NCAA and NATA publications. Of note is that certified athletic trainers work under the supervision and direction of team physicians, and may well become involved in this overall process.

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Q. Talk us through the basic facts of the case.

In September 1994, Nicholas Knapp, a 17-year-old high school senior basketball player unexpectedly collapsed at the end of an informal game. Ventricular fibrillation was documented; he was successfully resuscitated, intubated, received two electrical defibrillation shocks and was administered epinephrine and lidocaine. A cardioverter-defibrillator was implanted 10 days after the cardiac arrest. Knapp had previously accepted Northwestern University's oral offer of an athletic scholarship and, thereafter, signed a letter of intent to accept an NCAA Division I athletic scholarship to begin the following fall.

Upon enrollment, the team physicians declared him medically ineligible for the team, but he was allowed to retain his full athletic scholarship for the four-year matriculation period. The team physicians concluded that Knapp's participation in high-intensity intercollegiate basketball posed an unacceptable risk of sudden death.

In making their decision, they relied upon a review of his medical records, physical examination, recommendations of several treating or consulting cardiologists and published medical literature.

Knapp filed a lawsuit in federal district court, asserting that the university had violated the Rehabilitation Act of 1973.

The district court agreed, but the case was appealed, and the Seventh Court of Appeals reversed the district court in a "landmark" published decision in 1996.

Q. What is the holding of the case?

Without getting into all of the specific legal analysis under the Rehabilitation Act, the Seventh Circuit Court of Appeals emphasized that "medical determinations of this sort are best left to team doctors and universities as long as they are made with reason and rationality and with full regard to possible and reasonable accommodations."

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PHASES OF PANDEMIC ADVOCACY, *continued from page 03*

care they had been providing thus far throughout the pandemic.

In December 2020, a revised list was released and athletic trainers were added to the priority list to receive the COVID-19 vaccination.

Although unsure if her communication with the lobbyist made it to the state capital, having the recognition for athletic trainers as essential health care providers still constitutes a success.

Phase Three: Approval for ATs To Administer COVID-19 Vaccinations

Most recently, athletic trainers in a limited number of states have been tapped to administer the COVID-19 vaccine, but many state practice acts limit ATs from providing invasive procedures, which often includes injections.

In Wisconsin, though, John McKinley, MS, LAT, ATC, manager of athletic training outreach services for UW Health, was critical in finding the legislation needed for athletic trainers employed by the health system to administer vaccines. Starting with flu vaccines in the fall, McKinley said athletic trainers were approved to vaccinate after working closely with the health system's internal legal team.

Because Wisconsin's state practice act does not explicitly allow ATs to perform vaccinations, and there was no temporary regulations from the state during the pandemic to allow them to, a workgroup was established at the hospital review options within state statutes.

The legal workgroup, which included representatives from education and training, medical records, overseeing physicians and internal administration to review hospital policies and procedures, used a physician delegation protocol that allowed health care providers to receive training and administer vaccinations under the guidance of a supervising physician.

With approval to administer flu vaccinations secure, McKinley advocated quickly ahead of the national COVID-19 vaccination approval to ensure ATs also receive physician delegation to administer those, once available.

Through a similar process that included necessary education and training, athletic trainers employed by UW Health have administered COVID-19 vaccinations at UW Health facilities since December 2020.

Now, athletic trainers are administering vaccines throughout clinics, urgent cares and hospitals in the state. Additionally, all athletic trainers in the health system have been vaccinated as part of one of the first tiers of essential health care providers in the state.

As the pandemic continues to rage on in 2021, ATs are still finding new opportunities to be a part of the COVID-19 response and work with their state associations to understand how best to advocate for their role as essential health care providers with legislators.

In the future, PATS plans to use its efforts as athletic trainers during the pandemic to help support future legislation, and to make some state executive orders more permanent. Expanding the patient population of athletic trainers in the state practice act, for example, is one pathway Tanya Miller said PATS can take because of the success ATs have had in combatting the pandemic across various settings.

Its relationships with its lobbyist, legislators and other medical organizations have been critical in working to support athletic trainers during the pandemic, and that success will continue to be beneficial for ATs in the state.

In Missouri, Carmichael is eager to see the recognition and understanding of athletic trainers in the state improve, but it starts with members themselves. Carmichael said MoATA will continue "educating our membership on the updates to the state practice act to ensure they communicate with employers and supervising physicians, and work on building strong relationships with them and creating protocol that give you the freedom to do everything you're capable of doing."

Snow is inspired by the positive recognition ATs in her state have already generated.

"Overwhelmingly, athletic trainers are viewed very positively in New Hampshire, whether or not people feel that way," she said.

"It creates a lot of hope that [athletic trainers] were included [in the COVID-19 response] – sometimes it's a matter of being the sticky wheel and asking questions of your lobbyist, but it's also about being grateful and being good stewards of the profession."

Part of that is being aware of the quickly changing direction from the federal and state governments about how to best combat COVID-19. It's important to remember that athletic trainers are responsible for seeking out information about executive orders and mandates in their respective areas and should adjust their practice accordingly.

Following state associations closely, through social media, email newsletter updates or website announcements, state leaders are working to inform members on updates to ensure all ATs are practicing within their legal right to do so, and with the least amount of risk.

COLUMN

Compliance With Athletic Training Practice Acts Starts With Knowing It

BY TIMOTHY NEAL, MS, ATC, CCISM, AND JAMIE MUSLER, LPD, LAT, ATC
NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

If you, as a licensed or otherwise credentialed athletic trainer, are asked by your directing physician, employer or an attorney if you are in compliance with your state athletic training practice act, how would you respond? Surprisingly, many athletic trainers would not know what to say to such an important question, but the responsibility of every athletic trainer includes knowing your state practice act in order to be compliant and provide the care permitted by law in your respective state.

The credentialed athletic trainer is a health care provider. The AT must know and adhere to the scope of practice as defined by their state athletic training practice act as well as rules and regulations. A state practice act is a state law that authorizes the practice of a profession. This includes athletic training. A state practice act, along with rules and regulations, protects the public from unsafe athletic training services and establishes the legal parameters for what the athletic training professional being regulated is permitted to do. Athletic training practice acts differ from state to state.[1]

It is important for ATs to comply with regulatory, legal and ethical standards as established in their practice acts. Athletic trainers, in their respective places of employment, must follow their state practice acts and practice within their scope of practice. In order to follow the scope of practice, it is important to understand how scope of practice is addressed in the Board of Certification Inc. Standards of Professional Responsibilities and the NATA Code of Ethics:

Board of Certification Inc. (BOC) Standards of Professional Practice Responsibilities[2]

3.2. Practices in accordance with applicable local, state and/or federal rules, requirements, regulations and/or laws related to the practice of athletic training.

3.5. Does not misrepresent in any manner, either directly or indirectly, their skills, training, professional credentials, identity or services or the skills, training, credentials, identity or services of athletic training.

3.5.1. Provide only those services for which they are prepared and permitted to perform by applicable local, state and/or federal rules, requirements, regulations and/or laws related to the practice of athletic training.

NATA Code of Ethics[3]

2.1. Members shall comply with applicable local, state, and federal laws, and any state athletic training practice acts.

In addition to the NATA and BOC requirements, it is also a requirement of licensure or other state credentials that the AT know, understand and comply with their practice act and all state rules and regulations. These regulations create the foundation and legal parameters for the AT's scope of practice.

Below are some steps athletic trainers can take to assure compliance with their practice act and rules and regulations:

1. **Obtain a copy of the state rules and regulations that governs the practice of athletic training.** Rules and regulations may be included in the statutory language of the practice act or a separate collection of rules and regulations created by a regulatory board or other state agency.

   In most cases, rules and regulations can be read and downloaded from the agency or board that regulates or issues the state athletic training credential. Each states regulations is also accessible from NATA at **members.nata.org/gov/state/regulatory-boards/map.cfm** or the BOC at **www.bocatc.org/state-regulation/state-regulation**.

2. **Review the state rules and regulations.** This is often more difficult than one may expect. Rules and regulations are often a combination of definitions and general statements that can be ambiguous and hard to define. It may help to use a four-step process. First, identify the aspects of the ATs practice that the rules and regulations specifically and clearly describe and authorize in the regulations. Second, identify the aspects of the ATs practice that the rules and regulations specifically prohibit. Third, identify those aspects of the AT's

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The appellate court explained that in cases of this nature, "the court's place is to ensure that the exclusion or disqualification of an individual was individualized, reasonably made and based upon competent medical evidence."

Q. What was the appeal process like, and what was the ruling on appeal?

The federal district court decision, which agreed with Knapp, was appealed to the U.S. Court of Appeals, Seventh Circuit. The Seventh Circuit reversed the federal district court's decision.

This case, in many respects, is a landmark decision on the issues and facts involved in a college or university setting.

Q. What were the key factors behind the court's ruling?

The court determined that under the facts of this case in a collegiate setting, Knapp was not a disabled person under the Rehabilitation Act, stating that "playing intercollegiate basketball obviously is not in and of itself a major life activity, as it is not a basic function of life. … Playing or enjoying intercollegiate sports therefore cannot be held out as a necessary part of learning for all students."

Q. Tell us about the Class v. Towson University case, in which the Knapp case was cited.

In August 2013, as the temperature in Baltimore reached 91 degrees, student athlete Gavin Class collapsed from exertional heatstroke while practicing with the Towson University (formerly Towson State University) football team. He was transported to a

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local hospital where he remained in a coma for nine days, suffered multi-organ failure requiring a liver transplant and numerous additional surgeries.

Following a protracted recovery, he returned to Towson to pursue his plan to return to NCAA Division I football. Applying its return-to-play policy, Towson refused to clear Class to play because the team physician concluded that allowing Class to participate in the football program presented an unacceptable risk of serious injury or death.

Class commenced an action against the university, asserting that its decision to exclude him from the football program was a violation of the Americans with Disabilities Act and the Rehabilitation Act. The federal district court agreed with Class. On appeal, the U.S. Court of Appeals Fourth Circuit reversed that decision citing the landmark ruling in Knapp v. Northwestern.

Q. What is the significance of this ruling for athletic trainers?

The Towson case cites the Knapp decision, as it is really on all fours with the Knapp case. The added fact in Towson is that under its written return-to-play policy, the team physician has the final and autonomous authority in deciding if and when an injured student athlete may return to practice or competition.

In reaching its decision to reverse the federal district court, the Towson Fourth Circuit Court underwent a thorough analysis of the record, as was done in the Knapp Seventh Circuit decision, emphasizing that in reaching their decision, the team physician, board certified in sports medicine, consulted with her medical colleagues, conducted a physical examination of Class, reviewed his medical records and his medical history, reviewed the results of outside heat tolerance testing performed on Class, consulted his liver-transplant physicians and reviewed medical literature.

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practice that may be vague or need clarifying. This may be a general definition or statement that doesn't provide clear direction. For example: The AT may be specifically authorized to perform manual therapy; however, without a further definition of "manual therapy," it may be unclear what is included under the general term "manual therapy." Lastly, identify the aspects of the ATs practice that the rules and regulations do not mention. This could include basic or more complex aspects of clinical practice that are not addressed in the rules and regulations.

3. **Gather additional information and seek out clarification for the items that are ambiguous or not addressed.** It is important to remember there are many state and federal agencies that promulgate regulations that impact athletic trainers. ATs should look for information and clarification from other regulatory entities including non-athletic training boards, state and local departments of public health and other governmental agencies that can provide guidance. There are also a variety of professional groups and associations that publish guidance in the form of position, official and consensus statements, such as NATA, BOC and the Commission on Accreditation of Athletic Training Education. Other organizations include:
   - State athletic training association
   - National Collegiate Athletic Association
   - American College of Sports Medicine
   - American Academy of Orthopaedic Surgeons
   - American Academy of Neurology
   - American Medical Society for Sports Medicine
   - National Federation of State High School Associations
   - Centers for Disease Control and Prevention
   - Occupational Safety and Health Administration
   - Korey Stringer Institute
   - Academy for Sports Dentistry
   - American Orthopaedic Society of Sports Medicine
   - American Osteopathic Academy of Sports Medicine
   - American Academy of Podiatric Sports Medicine
   - American Optometric Association – Sports Vision Section
   - Association for Applied Sport Psychology
   - Sport Information Resource Centre
   - National Operating Committee on Standards for Athletic Equipment

Once defined and understood, the AT should work with their directing physician to develop standing orders and standardized procedures to authorize their practice and assure the AT practice is in accordance with local, state and federal laws, rules and regulations.

Once standing orders are defined, the AT should work with their employer to develop policies and procedures. Policies and procedures provide guidance for the daily practice of the AT. The policies and procedures assures the AT only provides those services to their patients that are permitted and within the scope of their practice.

It is also recommended that the AT provide the state practice act and rules and regulations not only to their directing physician, but also to their direct supervisor, the risk manager or legal counsel and athletic training staff in order to establish guidelines of permissible health care in their respective state.

It is also a good step to include the state practice act in the policy and procedures manual for reference, and to stay vigilant to changes in the AT practice act via the athletic training state association, which monitors any changes.

Inevitably, there will be questions and gray areas. No statute, rules and regulations or policy can address all situations. In fact, gray areas are needed to allow for innovation and clinical advances.

On the other hand, these gray areas also create the biggest challenges for the practicing athletic trainer. Strategies for dealing with the gray areas are an important aspect to the AT's practice. Each AT is responsible and has a legal and ethical obligation to comply with their state practice act.

Unfortunately, not knowing is not a valid excuse for not complying. Knowing the state practice act and rules and regulations are the first steps in complying with regulatory, ethical and legal athletic training standards.

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Legal Terms To Know

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

First up, vocabulary review. Compiled by *Sports Medicine Legal Digest* editors and legal experts, LAW 101: Legal Terms To Know outlines common terms all athletic trainers should learn and continue to brush up on.

ACQUITTAL

In criminal law, a verdict of not guilty. In contract law, a release, absolution or discharge from an obligation, liability or engagement.

CASE LAW

This results from rulings by courts that establish precedent for a future similar case. Case law is only established through court decisions, not settlements or filings of lawsuits.

DEPOSITION

Pretrial proceedings in which an attorney can pose questions to witnesses under oath with a court reporter present. Usually taking place in an attorney's office, the opposing attorney has an opportunity to cross-examine the witness being deposed.

LAWSUIT

The filing of an action by a person or organization against another person or organization in a local, state or federal court. The person initiating the lawsuit is the plaintiff, and the other party is the defendant.

MEDIATION

This occurs when the parties agree to have a neutral person attempt to settle a dispute before going to court. Mediation is different from arbitration, which is usually binding while mediation is not.

MOOT

A controversy that doesn't exist because it involves a dispute that already has been decided or isn't present any longer. Thus, a case can be decision moot when there is no issue that could be affected by the court's decision.

PLEA BARGAIN

A negotiation in which the accused in a criminal case and the prosecutor work out a mutually satisfactory disposition of the case subject to court approval. This negotiation usually involves the defendant's pleading guilty to a lesser charge than the original alleged offense.

RETAINER

A contract between attorney and client specifying the nature of the service to be rendered and the cost of those services. Attorneys usually require new clients to sign a retainer before they do any work on the case.

SUMMARY JUDGMENT

This occurs when one party asks the court to rule on the case without hearing any evidence. For example, the defendant can ask a judge to dismiss the case because they claim the lawsuit on its face has no merit.

TESTIMONY

Oral evidence offered by a witness under oath used to establish facts. Testimony is different than evidence, which is acquired through the use of written documents or physical items.

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The Fourth Circuit Court in the Towson case emphasized that the dispositive question is "whether the team physician's opinion was reasonable – i.e., whether it was 'individualized, reasonably made and based upon competent medical evidence,'" citing the Seventh Circuit Court decision in the Knapp case, and whether the team physician and Towson University reasonably considered Class' proposed accommodation. The court ruled in favor of Towson University.

Of course, as noted above, certified athletic trainers may become involved with team physicians in this overall process for any particular student athlete.

Q. Have there been any other recent cases involving the same issue, and if so, what were those rulings?

As noted, Knapp case is considered a landmark decision (followed subsequently by Towson), and both are important cases on the relevant issues involved in exclusion and return-to-play considerations with student athletes in the college and university setting.

Certainly team physicians – and athletic trainers – should seek advice from their college and university in-house counsel as to any additional applicable cases that may apply to their particular state jurisdictions in which they practice as physicians and certified athletic trainers.

Q. What's the biggest takeaway for athletic trainers as a result of this litigation?

As a certified athletic trainer working under the supervision and direction of team physicians, one should appreciate possible involvement in these types of situations while caring for collegiate student athletes.

CASE SUMMARY

Football Player Loses Negligence Lawsuit; Fails To Meet Burden of Proof on Injury Causation Issue

Editor's note: This case summary is presented to illustrate the liability in negligence lawsuits that is placed on secondary school coaches when an athletic trainer is not present.

A California high school student athlete sued his school district and coach for negligence after suffering a severe concussion during a physical education course. A jury ruled the coach and school district negligent, but that the player didn't meet the burden of proof in demonstrating that his injuries were caused by the school district and coach's lack of reasonable care and that the player assumed the risk of his injury.

Although this case doesn't involve an athletic trainer, the process illustrates the importance of the assumption of risk and burden of proof in negligence cases that potentially could involve athletic trainers.

The player sued the school district and football coach, arguing that they were negligent in overseeing the physical education course. Specifically, the player alleged that the coach and school district were negligent in failing to fulfill the duties of supervision, proper technique instruction, protective athletic equipment, evaluation of players for injuries and immediate medical response.

The player was participating in a seven-on-seven tournament during a spring semester physical education course, which was required for all members of the high school team. Players wore cleats, but not helmets or pads, and were instructed to play two-hand touch, avoid physical play and to "only go at half or quarter speed."

The player appealed the court's decision, but in what most experts would call an outlier decision, the appellate court upheld the lower court decision. The appellate court did note that the coach "knew the participants would be aggressive, competitive and going full speed." The court also referenced the coach, noting that games became "brutal and very physical" and "participants were tackling, fighting, trash-talking and getting hurt left and right."

The court also noted that as the sole supervisor for more than 60 participants in the class and tournament, the coach was unable to control a high level of contact during play, and the player suffered his injury when he and a teammate made head-to-head contact after colliding at full speed while trying to intercept a pass.

However, ultimately siding with the school district and coach, the appellate court also upheld the exclusion of expert testimony to the jury that would have established the use of helmets in seven-on-seven game play. Further expert testimony stated the need for a greater number of supervisors for an activity with 60 or more participants and other failings of reasonable care in the operation of the physical education class were also excluded.

Despite the district and coach not being held liable in the appellate court's decision, the standard of practice for athletic trainers, coaches and school districts should still be evident: To best ensure the safety of student athletes, athletic programs must implement strategies during off-season programs to fulfill all of the categories of duties owed to the young people with responsibility for whose well-being schools and coaches are charged.

CASE SUMMARY

Sovereign Immunity Protects Coach in Negligence Suit Filed by Patient's Mother

Editor's note: This case summary is presented to illustrate the risk placed on secondary school athletics administrators and coaches when there is not an athletic trainer present to treat student athletes and ensure a safe practice environment.

When faced with a negligence lawsuit, athletic trainers, coaches and school districts often raise the defense of sovereign or governmental immunity. That defense originated with common law principles inherited from England, which provide protection for government organizations and their employees against legal liability in certain lawsuits.

However, for several decades now, that principle has been substantially eroded to the point where more than half of the states have either eliminated or considerably questioned the basis of sovereign immunity. Nevertheless, it can still be raised as a valid defense against alleged negligence.

While jogging around the track at a middle school in Connecticut, along with about 25 other members of the cross-country team, a 13-year-old student athlete ran into a bench on one of the lanes on the track. He suffered a displaced fracture of the radius of his left wrist.

The boy's mother filed a negligence lawsuit against the school district and the cross-country coach, alleging that they failed to provide a safe environment for members of the cross-country team.

In support of her assertion, the mother noted that the school handbook for athletic coaches states that athletic coaches are to provide assistance and safeguards for every participants in a school-sanctioned sport. She argued that the handbook imposed a legal duty on the coaches, which the coach had breached, resulting in a substantial injury to her son.

At trial, the school district and coach raised the defense of governmental immunity. In determining whether the doctrine of governmental immunity applied in this case, the court

ruled that, in cases involving the negligence of employees, the application of governmental immunity depended on whether the negligent act was ministerial or discretionary.

A ministerial act is a duty or task performed in a prescribed manner that does not require exercising specific judgment or discretion. To create a ministerial duty, there must be a city charter provision, ordinance, regulation, rule, policy or any other directive compelling a municipal employee to act in any prescribed manner.

If the act in question involves a ministerial duty, the court stated, municipal employees may be liable for the negligent performance of the act. The injured boy's mother maintained that the duties imposed on the coaches by the handbook impose such a ministerial duty on the coach.

However, the court ruled, that the act in question was not ministerial. The court referenced the handbook and found that it did not prescribe any particular manner of performance of duties. Instead, the court said, it stated that coaches were to ensure a safe environment and provide safeguards for the athletic participants. How exactly the coaches chose to ensure a safe environment or providing safeguards required the coach to use their judgment and discretion, according to the court.

While municipalities and their employees may be generally immune for the negligent performance of discretionary acts, the court noted that there are three exceptions to this principle. The first exception occurs when liability may be imposed for a discretionary act when the alleged conduct involves malice, wantonness or intent to injure. The second exception occurs for liability may be imposed for a discretionary act when a statute provides a cause of action against a municipality or municipal officer for failure to enforce certain laws. The third exception allows liability to be imposed when the circumstances make it apparent to the public official that their failure to act would be likely to subject an identifiable person to imminent harm.

The boy's mother asserted that, even if the court found the acts discretionary, the coach's action fell within the imminent harm and identifiable victim exception. In applying this exception, the court ruled that it only applies when it is apparent to the public official that their failure to act would be likely to subject an identifiable person to imminent harm.

In applying this test to the facts, the court found that while students are compelled to attend school qualify as an identifiable class of foreseeable victims, that designation does not apply to voluntary participants in afterschool activities off school grounds.

Because there was no statute requiring the mother's son to participate in cross-country, making him a voluntary participant, and the injury occurred after school had ended and occurred off school grounds, the court ruled exception did not apply.

Since the exception did not apply, the court ruled in favor of the coach and school district on the basis of sovereign immunity.

It is important to note that the requirements of the defense may be different from state to state. Regardless of the state, if an employee is required to perform their duty in a prescribed manner and does so negligently, governmental immunity generally will not protect the employee from legal liability.

CASE SUMMARY

Court Defines Reasonably Prudent Standards for Coaches Dealing with Possibly Concussed Players

Editor's note: This case summary is presented to illustrate the liability placed on secondary school coaches when an athletic trainer is not present to handle possibly concussed student athletes.

When a football player suffers a possible concussion, both the coach and athletic trainer have responsibilities for determining whether to allow the player back into the game or continue practice. Athletic trainers are expected to follow return-to-play protocol outlined in state practice acts, when applicable, and best-practice standards, but coaches have less direction available in this type of decision-making.

In Nebraska, a court was called on to define the standard of care applicable to a football coach who allowed a player to return to play and practice after sustaining a concussion. During the subsequent practice session, the student athlete suffered a closed-head injury with second concussion syndrome causing permanent brain injury.

The player sued the coach and school district, and the trial court sided with the coach and school district. The player appealed, and the appellate court ruled that the standard of care is "that of the reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement." The court also held that the finder of fact (a jury or the judge in a bench trial) had to determine what conduct was required by that standard under the circumstances of allowing a player to return to play.

According to the court, this determination could be aided by expert testimony from the parties, presumably physicians and athletic trainers. The court returned the case to the trial court for this determination. The coach and school district were found not to be liable.

The player appealed a second time to higher court, which continued to affirm the lower court ruling. The lower court specifically found that in the event that a player has sustained a head injury, the conduct required of a reasonably prudent person holding a Nebraska teaching certificate with a coaching endorsement during the relevant period was as follows:

- To be familiar with features of concussion
- To evaluate a player who appeared to have suffered head injury for symptoms of concussion
- To repeat evaluation at intervals before the player would be permitted to re-enter game
- To determine, based on assessment, seriousness of injury and whether it was appropriate to let the player reenter the game or to remove the player from all contact pending medical examination.

Based on those factors, the court ruled that neither the coach nor the district were liable for the player's injuries.