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REVIEWED BY

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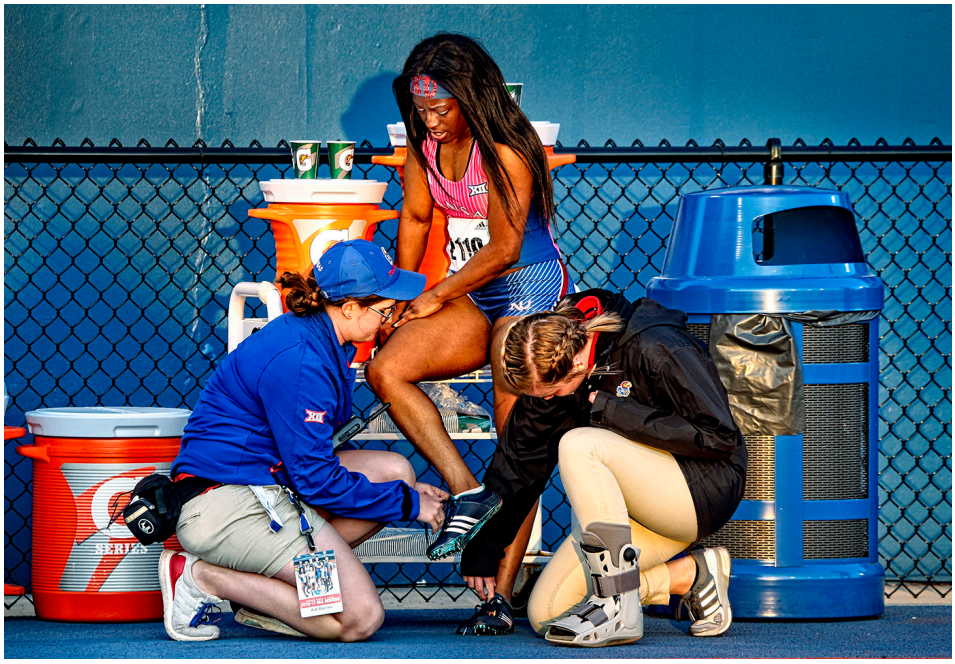

Eating Disorders On Campus: The AT's Role

What ATs can do to responsibly prevent, and care for athletes with eating disorders at the collegiate level

BY CLAIRE WILLIAMS

Despite research since the 1980s and '90s indicating the prevalence of eating disorders in collegiate athletes, nationally, there are no set standards for athletics departments regarding eating disorder prevention or care. Legally, precedence hasn't been set in the courts that outlines specifically with whom liability lies when it comes to eating disorder cases – in fact, there have been very few cases brought in front of the courts that involve negligence of an athletic trainer, or a coach, regarding eating disorders.

But, many institutions are in the process of adding required eating disorder education, community partnerships and guidelines to the policies and procedures that direct care for athletes with or suspected to have disordered eating. Understanding the possible legal liability placed on ATs when these policies are created is an important part of their role as responsible health care providers.

"The thing that's difficult about intercollegiate athletics, in particular, is there's not a good mechanism to independently evaluate these situations from a national level," said Jason Montgomery, a higher education attorney and former NCAA investigator. "[Legally,] it's left to these individual scenarios at institutions; it comes down to whether those involved bring legal action, which would [then] create some liability for the institution and the athletic trainers."

A recent subcommittee created within the NATA Intercollegiate Council for Sports Medicine has provided resources, including how to find community dietitians and therapists, on the ICSM Resources webpage to help collegiate athletic trainers develop, review and enhance their current practices in this area. The subcommittee utilizes collective experience from ATs at various colleges and universities to create additional resources that will better assist athletic trainers in the collegiate setting in providing the highest standard of patient care.

Dean Miller, MS, LAT, ATC, ICSM Division I committee member and director of sports medicine at Rice University, and B.J. Geasa, MA, ATC, ICSM NAIA Committee member and assistant athletic director for sports medicine at Southeastern University, both sit on the ICSM disordered eating and body dissatisfaction subcommittee.

For many decades, the prevalence of disordered eating has been significantly higher among athletes in sports in which light weight or small body size is deemed necessary to achieve success or in which weight classifications apply, such as gymnastics, wrestling or track and field, Barbara Bickford reported in a 1998 issue of the *Marquette Sports Law Review*.

More recently, a 2020 report in the *Sport Journal* referenced a number of studies that examined the symptoms of disordered eating among NCAA athletes. It was found that up to 84% of collegiate athletes reported engaging in maladaptive eating and weight control behaviors, such as binge eating, excessive exercise, strict dieting, fasting, self-induced vomiting and the use of weight-loss supplements.

The *Sport Journal* reported that a substantial body of literature shows that rates of eating disorders and disordered eating symptoms among collegiate athletes range widely, between 0% and 19% in male athletes and between 6% and 45% in female athletes. Although eating disorders occur more often in female athletes, male athletes, in sports such as wrestling, rowing and cross country, are at greater risk for pathological weight control behaviors, echoing Bickford's 1998 findings.

Although there aren't currently specific policies regarding eating disorder care at the collegiate level, NATA published a position statement in 2008 to offer a framework for sports medicine teams to create these policies. Additionally, NCAA has established health and safety initiatives to assist institutions in identifying practices to potentially reduce individual risk and institutional liability.

But, as stated in the "Preventing, Detecting and Managing Disordered Eating in Athletes" position statement, available at **www.nata.org/news-publications/pressroom/statements/position**, what these guidelines are lacking are specific legal standards on what is obligatory.

"Organizations must thoroughly examine both the benefits to their athletes and the financial implications to their sports medicine programs in ascertaining how to satisfy the legal duty of reasonable care," the statement says.

It's important, the statement continues, that leadership understands its responsibility for reasonable care when administering its athletic program to prevent foreseeable harm to its participants and avoid potential liability for negligence.

Unfortunately, Montgomery said, there isn't a lot of case precedence available that suggests eating disorders can be an actionable cause for a legal claim.

"But, as standards of care continue to evolve and there are more high-profile issues at institutions with eating disorders, questions will be raised," he said. "Negligence is the most likely claim, involving an athletic trainer, coach, university or all three."

Generally, a negligence suit requires the plaintiff to establish the following:

1. A duty or obligation recognized by the law, requiring the defendant to conform to a certain standard of conduct
2. A failure to conform to the standard required
3. A causal connection between the conduct and the resulting injury
4. Actual loss or damage resulting to the interests of another

What Montgomery encourages athletic trainers to understand is their duty to the athlete, in addition to the university's duty to the athlete.

A benchmark case in 1993, Kleinknecht vs. Gettysburg College, determined that a college has a special relationship with its student athletes because of the recruitment process and, therefore, a college owes a duty of care to the athlete. With this ruling, courts determined that anyone engaging in varsity-level competition and was recruited, requires more duty from the institution than club or recreational-level athletes.

Additionally, in Searles vs. Trustees of St. Joseph College in 1997, the Supreme Judicial Court of Maine ruled that a college has a legal duty to exercise reasonable care toward its students. Therefore, that duty encompasses the duty of college coaches and athletic trainers to exercise reasonable care for the health and safety of student athletes.

Because not only college or universities are likely to be held responsible for their duty of care to student athletes, athletic trainers are also equipped with a duty of care to patients. Similar to a physician or other health care provider, the athletic trainer's responsibility is to protect the health and safety of the athletes. As health care providers, athletic trainers also have a duty to abide by HIPAA laws and ensure their patients' privacy is protected.

"Whether there's liability or not, you're most concerned about the health and well-being of the athlete and this is just a component of that for athletic trainers," Montgomery said.

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Q&A

DIRECTOR OF COUNSELING AND SPORT PSYCHOLOGY DISCUSSES AT'S ROLE IN ATHLETE MENTAL HEALTH

Kacey Oiness, PhD

Increasingly, athletes are realizing that it's as important to be mentally healthy as it is to be physically healthy.

As society as a whole has attempted to shed the misplaced stigma of mental health, athletes in both professional and collegiate sports, in disciplines as varied as gymnastics, tennis and football, have admitted to having mental health issues that affected not only their performance, but their overall well-being.

But, what's the role of the athletic trainer in dealing with these mental health issues? How should ATs be interacting with mental health professionals and the athletes themselves?

To find out more about this issue, *Sports Medicine Legal Digest* interviewed Kacey Oiness, PhD, director of counseling and sport psychology for athletics at the University of Nevada at Las Vegas. Oiness is a licensed psychologist who specializes in collegiate athlete mental health. Below, she shares insights into what ATs need to know about mental health and their legal responsibility.

Q. What is the role of the athletic trainer when they want guidance from mental health professionals about athletes?

Athletic trainers, and other members of the medical staff, can work in collaboration with a mental health professional from a multidisciplinary treatment team approach. Communication is a key factor in navigating mental health concerns, and even when a mental health professional can't share specific

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information, they can still provide general guidance and recommendations based off information shared from an athletic trainer. It's important to ask questions and seek input any time an athletic trainer has concerns about the mental health of one of their student athletes.

Q. What is the role of the athletic trainer when contacted by a mental health professional about an athlete's mental health?

An athletic trainer is in a role in which they are in very close contact with student athletes regularly and often times have useful information and insights they can share with other members of the sports medicine team, including a mental health professional. This information can be useful for the mental health provider in guiding treatment and understanding whether or not the student athlete is medically stable.

Q. How should an AT communicate with a mental health professional about an athlete's mental health and be compliant with privacy laws?

The mental health professional will keep information confidential, unless the student athlete has signed a release-of-information form and informed consent has been provided. If a release hasn't been signed, general guidance surrounding mental health issues can be provided. If a release has been signed, the team can work in collaboration to provide holistic care.

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EATING DISORDERS ON CAMPUS, *continued from page 03*

When considering protection from a negligence suit, athletic trainers must also be acutely aware of the standard of care in the collegiate setting regarding eating disorders. Athletic trainers must know how a reasonably competent health care professional would provide care to a patient under similar circumstances.

While there isn't case precedence that outlines standard of care for eating disorders, anecdotal information does indicate that a coach or administrator could engage in activities that affect athletes and result in an eating disorder, Montgomery said. In these situations, although theoretical, the liability could be placed on the university and not the athletic trainer.

Still, Montgomery said there is a significant burden placed on athletic trainers, in particular, because of where they're on the institutional spectrum of reporting. He encourages proactivity, searching out lines of communication outside of a typical chain of command, such as the team physician, athletic director or even general counsel, which will not only protect the AT themselves, but their patients as well.

At Rice University, a Division I institution, Miller said that all eating disorder care or concerns among student athletes were incorporated into sports medicine in 2018. Within sports medicine at Rice, there are physicians, athletic trainers, strength and conditioning coaches and a nutritionist available to provide interdisciplinary care at every step, from preventative care to diagnosis and treatment.

"Eating disorders need to be handled medically," Miller said. "When any weight changes or muscle requirements are requested by a coach internally, physicians, dietitian, AT, psychotherapists and strength and conditioning coach are always part of the process."

To limit the coach's influence, Miller also ensures that all analytics taken on body size or composition are blinded during evaluation and analysis by coaching staff until the student athlete has a complete consultation with the nutritionist and physician.

More recently, Miller's focus has been on prevention and education on eating disorders among the entire athletic department, coaches included.

At NAIA Southeastern University, Geasa's resources for nutritional and mental health on campus are more limited than Miller's.

"A lot of collegiate athletic trainers don't have the specific support for eating disorders that are available at larger campuses, such as on-campus nutritionists or mental services," Geasa said.

Because of this, Geasa works most often with referrals to community health care providers if an eating disorder concern arises with a student athlete, which also decreases their liability risk as a university. Whether on campus or off, the collaborative and interdisciplinary care is critical to addressing eating disorder concerns.

The NATA position statement states, "the key is to establish a network of qualified and knowledgeable professionals who can skillfully handle interventions, provide a seamless continuum of care, institute screening measures for early detection and develop educational initiatives for prevention."

A policy should include interdisciplinary collaboration among physicians, dietitians, psychotherapists, athletic trainers, administrators, coaches and campus safety officers to obtain desired outcomes, the position statement also recommends.

Although Geasa is in the early stages of policy writing that will outline how the department handles eating disorders, he is actively working to increase education within the athletic department and university administration.

"The policy will come, but we're working on educational opportunities," he said.

With these opportunities, Geasa is able to decrease risk and provide some liability coverage by increasing awareness of signs or predisposing factors of disordered eating and ensuring coaches are aware of their role in the communication process, similar to Miller's efforts at Rice, as well as administration.

The NATA position statement is clear in its recommendation to educate and clearly define the coach's role in eating disorder management. It states that policies should define the appropriate responses of coaches when dealing with athletes regarding body weight issues and performance.

"Coaches should not be allowed to disseminate improper weight loss advice, conduct mandatory weigh-ins, set target weights or apply external pressure on athletes to lose weight," the statement says.

The NATA position statement also stresses the importance of administration recognition and awareness of eating disorders, stating an appropriate response plan must start at the top, with administrators sending clear signals about what must be done and to what extent to prevent, minimize, contain and manage problems.

By ensuring all responsibility is clearly defined within policies on eating disorder prevention or care, athletic trainers can better understand and minimize their own liability risk. It's important, according to Montgomery, Miller, Geasa and the NATA position statement on eating disorders, that ATs collaborate with other qualified health care professionals to educate themselves, their

student athletes and administration.

To review the full NATA position statement, "Preventing, Detecting, and Managing Disordered Eating in Athletes," visit **www.nata.org/news-publications/pressroom/statements/position**.

Additionally, ICSM has developed resources for athletic trainers in the collegiate setting to assist with institutional education, policy development and finding local providers regarding patient body image. The council also hosted a virtual town hall event in January on body image and dissatisfaction that is available to watch on-demand. Resources and the town hall event are available at **www.nata.org/professional-interests/job-settings/college-university/resources.**

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Q. What legal liabilities does the AT face when dealing with an athlete's mental health?

Mental health occurs on a continuum, and there are aspects of mental health that will certainly present to their athletic trainer. It's important for the athletic trainer to know what issues student athletes bring up that are out of their scope and make appropriate referrals in order to minimize any liability.

Q. What behaviors should ATs look for if they are concerned about an athlete's mental health?

There are a wide range of behaviors and symptoms that athletic trainers can look for when determining whether or not a mental health concern is present. It's important to look at patterns of behaviors, changes in how a student athlete typically behaves and persistent symptoms. The following are common signs and symptoms (of course, this isn't a comprehensive, all-inclusive list):

- Sleep or appetite difficulties/changes
- Being withdrawn or isolating oneself
- Missing or late to practices
- Conflict with others
- Persistent down/depressed mood
- Excessive worry/stress/anxiety
- Lack of energy or heightened energy
- Decreased motivation
- Irritability
- Difficulties focusing
- Statements of helplessness or hopelessness
- Self-harm or suicidal thoughts

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CASE SUMMARY

Court Rules That State Board's Suspension of AT's License Was Legal

After an athletic trainer's license was suspended by the Indiana Board of Athletic Trainers for conduct that allegedly violated the standards of professional practice, she filed a complaint against the board.

The board found that the athletic trainer had committed misconduct, and the athletic trainer appealed the decision to a trial court. The board then filed a motion for summary judgment asking the court to dismiss the cases, which it did.

The court noted that the board regulates the practice of athletic trainers within Indiana and is responsible for establishing standards for the practice of athletic training. The board has the power to conduct hearings, keep records of proceedings and take necessary action to properly administer and enforce the law involving the licensing of athletic trainers, the court said.

Upon finding an athletic trainer has violated a standard of professional practice, the board has authority to impose a range of disciplinary sanctions, including suspension, the court ruled.

The athletic trainer was hired by the sports medicine department at a local university and also provided care at the local junior-senior high school. The athletic trainer, then 23 years old, began a sexual relationship with an 18-year-old male athlete after treating him for a knee injury.

When the student athlete's parents discovered the relationship, they filed a complaint with the school. At first, the athletic trainer denied that anything inappropriate occurred other than text message exchanges initiated by the athlete and specifically denied there was any physical contact.

The university terminated the athletic trainer, and she didn't renew her certification. The state board then filed an administrative complaint alleging that the athletic trainer had a sexual relationship with a student athlete she was treating, violating the state practice act by engaging in lewd or immoral conduct in connection with the delivery of services.

The athletic trainer didn't personally appear at the board hearing. Instead, her counsel appeared on her behalf to admit to the factual basis of the case, but argue the sanction. The board deemed this insufficient and issued a notice of proposed default against the athletic trainer.

The board unanimously voted against the athletic trainer and issued an order suspending her license for at least seven years. The athletic trainer then filed a complaint in the trial court alleging that the board violated her federal constitutional rights by holding her in default and arguing that she was entitled to damages.

After the trial court ruled against her, the appeals court sent the case back to the board for another hearing, at which the athletic trainer admitted to the relationship with the athlete and to violating the professional standards of athletic training. She took responsibility for what occurred, and the board heard testimony from the athlete about the relationship and its effects on him, including that he became estranged from his parents; suffered from stress and anxiety; and had problems at school, academically, athletically and personally.

In an attempt to get her license back, the athletic trainer offered the affidavits of two psychologists, one of whom asserted that she wouldn't pose an unreasonable risk of harm to patients

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Q. How should ATs approach a student athlete with a concern about their mental well-being?

The athletic trainer can address concerns with a supportive, non-judgmental approach. It's important to normalize what the student athlete is experiencing, listen and provide resources and sources of support.

Q. Should the AT help the student athlete make an initial mental health appointment?

This can depend on the relationship between the athletic trainer and the student athlete, as well as the student athlete's preference. Often a student athlete finds this helpful and supportive.

Q. Should an AT ask to meet with the parents of a student they suspects is having mental health issues?

Again, this can depend on various factors. It would be beneficial to have a discussion with the student athlete about their preference for this. This is also something that the mental health provider can discuss with them once they begin treatment. Releases would need to be signed in order to do so.

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going forward and recommended reinstatement of her license.

The appeals court upheld the trial court's decision to grant summary judgment against the athletic trainer. The court noted that the board had quasi-judicial immunity in taking administrative action and reporting the suspension to the National Practitioner Data Bank.

The board argued successfully that the court should dismiss any procedural due process, equal protection and First Amendment claims raised by the athletic trainer and that she wasn't entitled to raise more general substantive due process claims.

The appeals court concluded that the board had the statutory authority to set standards for the practice of athletic training, enforce those standards and impose discipline if it found standards have been violated. In addition, by statute, the court noted, the board must seek to achieve consistency in its decision-making and explain significant departures from prior decisions involving similar conduct, which it specifically did.

Having thoroughly reviewed the record of the board proceedings and the substantial, reliable evidence on the record, the court concluded that the athletic trainer had harmed the athlete; that she was aware of appropriate boundaries but didn't observe them; and that she was either unable or unwilling to recognize that her behavior was damaging to anyone other than herself.

"In short, the board has broad discretion in imposing sanctions up to and including permanent revocation of a license on an athletic trainer whom it finds to be subject to disciplinary sanctions," the court ruled.

COLUMN

The Lifecycle of a Lawsuit

Understanding the basics of civil procedure

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

As society has become increasingly litigious, athletic trainers, like many other health care professionals, could be caught in the crossfire. It's important to know what happens in litigation and the process of taking legal action. This column will chronologically break down how the process progresses.

While specific court rules vary from state to state and between federal and state courts, this overview is a start to understanding the ways that courts resolve disputes. Thankfully, most athletic trainers won't be named in a lawsuit during their careers. However, it's important that every athletic trainer understand the basics as they may be involved as a witness or other litigation involving their employers.

1. Complaint – Initiating a Lawsuit

Every lawsuit starts out the same way: The plaintiff files a document with the court called a "complaint." The complaint must contain a claim that wrongdoing occurred, enough facts to raise a reasonable expectation that discovery will reveal evidence of the alleged wrongdoing and a statement stating what the plaintiff is seeking from the court.[1] This means that while the plaintiff doesn't need to provide every fact in the complaint, they do need to provide enough for a judge to believe that the case is viable.

Additionally, the plaintiff needs to state claims they intend to show. Claims are legal conclusions that prove different occurrences.

Finally, a complaint must ask the court for relief. The statement of relief may be monetary (compensation for damages), injunctive (order preventing the defendant from doing something) or specific performance (requiring the defendant to do something).

It should be noted that news organizations often report on newly filed lawsuits. While they often have some merit, one shouldn't take all as true. Lawyers have an obligation to only file cases that they believe are viable in good faith. However, many jurisdictions offer "litigation privilege" that protects a party from liability for what is said in court pleadings. As such, things can sometimes be positioned in a way most favorable to the filing

party. Keep in mind that what is reported is only one side's opinion as to what happened. The truth may be elsewhere.

After the complaint is filed, it's "served" on the defendant along with a subpoena signed by the court. The complaint puts them on notice of the claim and the subpoena puts the defendant and claim under the jurisdiction of the court.

2. Answer and Initial Motions

After the complaint is filed and served, the defendant then has a set amount of time to respond. The response can be either in a motion to dismiss or an answer.

A defendant can ask the court to dismiss the case for a few different reasons:

- It fails to state a claim upon relief can be granted. This can be because the complaint doesn't state enough facts as described above, the complaint was filed too late or, even if all the facts in the complaint are true, the plaintiff couldn't meet all the elements of the claim.
- The court doesn't have jurisdiction. This can occur if the claim doesn't meet the rules to have the case heard in that court, defendant had no contact with the place where the lawsuit was filed or because it wasn't served properly. These can be very technical and are therefore beyond the scope of this article.
- Some other reason, such as if the parties agreed to resolve disputes privately through arbitration, the court can dismiss the case and require the parties to resolve the dispute that way. The judge will look at the facts in the way most favorable to the plaintiff and decide what to do.

A defendant can also answer. If their motion to dismiss is denied, then this is also the next step. In the complaint, the defendant will generally deny the plaintiff's claims and facts, set forth any legal defenses to the claims and state their own facts. It's important to note that any fact or point not denied in the answer is deemed admissible. As a result, many lawyers issue a "general denial" that denies everything in the complaint.

Like the complaint, the answer is protected by the litigation privilege. As such, it's important to know it is the defendant's view of the case. The truth is often somewhere in the middle between what is stated in the plaintiff's complaint and the defendant's answer.

3. Discovery

Once the initial pleadings have been filed, the parties engage in discovery, which is often the busiest and longest phase of a case. Discovery is the process by which the parties exchange information about the case.

Some information is sent at the onset. These "initial disclosures" include information about witnesses, insurance and more. Other discovery is specific and requested by one party from another party or from a third party that isn't part of the lawsuit. Below is a brief overview of some of the discovery mechanisms:

- Depositions: A deposition is a discovery mechanism where one party puts a person under oath and asks them questions. The deponent, or person being questioned, has to answer honestly or could face prosecution for perjury. Prior to a deposition, a lawyer will usually spend time with the deponent preparing them. At the end of a deposition, the court reporter will prepare a transcript that is provided to both parties and can be used in motions and for particular purposes in court.
- Written discovery: This includes interrogatories, where parties will ask specific questions of each other, requests for production, documents or other physical evidence, and requests for admission, in which parties will ask each other to admit or deny certain facts. During discovery, each party may also engage expert witnesses to who support their case. These people are often learned individuals with experience in the subject matter of the dispute. While they may not have seen what happened, they can often opine on what occurred based on evidence, records, or other information.

It's important to understand that each party is obligated to provide the information responding to a request from the other party. Failing to do so can have negative consequences.

4. Court Hearings, Mediation and Motions for Summary Judgment

As expected, a lawsuit involves trips to the courtroom. During the process, a judge will want to keep track of the case. They will often require the lawyers to attend regular status conferences where each party discusses where they are and what is happening. The judge will often require the parties to attend a mandatory settlement conference where a different judge may help the parties settle the case. Additionally, parties may file motions related to discovery if a party doesn't feel the other party met their obligations. Before trial, the parties also attend a pre-trial court hearing, where the judge may make decisions about evidence and what can and can't be said.

Most cases settle before trial. One way of doing so is through mediation. In mediation, the parties will engage a third party, often a seasoned attorney or retired judge, who facilitates settlement

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Q. What should an AT do if they think that an athlete has suicidal thoughts?

Connect the student athlete with a mental health provider to assess potential for suicidal thoughts and degree of risk. Additionally, this would be a circumstance in which it's important to follow your department's mental health emergency action plan if concerned about imminent risk.

MENTAL HEALTH RESOURCES

NATA offers members mental health-related resources to help them provide the best possible care to patients. These resources include:

- Mental Health Card handout
- Understanding Athlete Burnout & Mental Health infographic handout
- The Effects of Stress infographic handout
- Suicide Awareness infographic handout
- Inter-Association Recommendations for Developing a Plan to Recognize and Refer Student Athletes With Psychological Concerns at the Collegiate Level: An Executive Summary of a Consensus Statement
- Interassociation Recommendations for Developing a Plan to Recognize and Refer Student Athletes With Psychological Concerns at the Secondary School Level: A Consensus Statement
- Educational course in the NATA Professional Development Center: "Asking the Tough Question: Suicide Intervention Strategies in Athletic Training" provides suicide intervention training to ATs. This training provides attendees the opportunity to broaden their skills in caring for patients during crisis. Register at **pdc.nata.org/courses/tough-questions.**

Additionally, NATA recommends utilizing the above resources to create and routinely practice an emergency action plan to turn to during mental health crises.

For more information and additional resources, visit the Mental Health webpage on the NATA website. **www.nata.org/practice-patient-care/health-issues/mental-health.**

discussions. The parties have the choice to settle or not and make offers and counter offers.

Prior to trial and after discovery has ended, one or both parties may file a motion for summary judgment. Such motions ask the judge to decide the case without a trial. These motions may be granted if there is no triable issue of fact, and the moving party proves the elements of their claim and is therefore entitled to judgment as a matter of law. This means that a party can prove, through information they provided and gathered during discovery, that no important facts are in dispute. Additionally, they can show that those facts support their side of the case. If granted, this motion ends the case without a trial.

5. Trial

A trial is a legal proceeding where facts are determined. A judge or jury hears the evidence that is entered into the record through witnesses. Generally, judges decide law and juries decide facts, but some litigants can opt for a bench trial where the judge decides facts rather than the jury. Each party can have a witness testify, and the other party can cross examine them in an effort to undermine their testimony or their credibility. A judge will determine what evidence can and can't be admitted and what questions may and may not be asked, if a party objects, based on rules of evidence. At the end of the trial, the judge or jury will deliver a verdict, which is a finding about the facts of the case. This verdict is often summarized in a written judgment.

6. Appeals

If a party is unhappy with the verdict, they can appeal to a higher court that hears appeals. Most appeals don't review both the facts and law as findings of fact are the role of the trial court. Rather, the appeals court decides points of law, such as interpretation of prior cases and statutes, application of rules of evidence, procedures and methods of determining damages.

Each party gets one appeal at the end of the case. Rarely, a matter can go up on appeal on an important matter beforehand. An appeals court can affirm the trial court decision or overturn it and send the case back down to the trial court. Once the appeals court rules, the losing party can ask a top-level court, such as the U.S. Supreme Court or the Supreme Court in the state where the case was heard, to review the decision of the appeals court.

Very few cases are accepted as it's up to the Supreme Court to decide what to hear. As such, they generally select cases where different appeals courts have ruled differently (a split of authority) or if a case presents a novel question of law.

While daunting, the civil procedure process is part of American dispute resolution. The ultimate goal is to ensure that each party has a fair opportunity to resolve a dispute. As with everything in law, the specifics are far more complicated than can be taught in one article. Lawyers spend over a year learning about the rules of civil procedure and even more time studying rules of evidence. If you have questions about the process, your lawyer can help you understand the complexities as it relates to your case.

References

1. Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)

CASE SUMMARY

Federal District Court Dismisses AT's Breach of Contract Suit After Defendent Establishes Res Judicata

An athletic trainer at a Pennsylvania institution sued the university for breach of contract, wrongful constructive discharge, civil conspiracy and intentional infliction of emotional distress after he lost his lawsuit in state court.

According to the contract governing his initial employment relationship, the university was obligated to pay him one year's salary if he was terminated without cause.

The athletic trainer started out as the university's head football athletic trainer and was ultimately promoted to assistant athletic director, responsible for overseeing all of the university's athletic training services. The university continued to employ the athletic trainer even after his contract expired. However, when the university removed him from his assistant athletic director position and reduced his compensation, he resigned.

The athletic trainer then sued the university, athletic director and senior associate athletic director in state court. The university moved to dismiss his complaint, and the court agreed. It dismissed the case without prejudice, which allowed the athletic trainer to amend his complaint. But, the athletic trainer never filed an amended complaint.

The athletic trainer appealed the dismissal of his state case in federal district court. The university argued that the legal doctrine "res judicata" barred the athletic trainer's claims. Res judicata, also known as "claim preclusion," bars a plaintiff from initiating a second suit against the same defendant based on the same cause of action as the first suit. The defendant invoking res judicata must establish that there was a prior, final court decision; that the same litigants were involved in both the prior and the current case; and the plaintiff's lawsuit in the current case was basically the same as the prior case.

The court ruled that the university established all three elements of res judicata. First, the state court dismissed the AT's complaint because his allegations were legally insufficient to state a claim. Under Pennsylvania law, "dismissal of an action for failure to state a claim is a final judgment on the merits," the court noted. In dismissing the AT's complaint, the state court had dismissed the merits of each of the athletic trainer's claims, the higher court ruled, constituting a judgment on the merits for res judicata purposes.

In addition, the higher court pointed out, the state court had given the athletic trainer 20 days to file an amended complaint. When the athletic trainer failed to do so, it concluded the case. This missed 20-day deadline also demonstrated that the state court had issued a final judgment on the merits for res judicata purposes.

Since the AT and the university were also parties of the state court, the university had legally established the second element of res judicata, as well, according to the federal district court.

Finally, the university had proven the third element of res judicata, as well – that the causes

of action are the same. "Identity of two causes of action may be determined by considering the similarity in the acts complained of and the demand for recovery, as well as the identity of the witnesses, documents and facts alleged and whether the same evidence is necessary to prove each action," the federal court stated.

The athletic trainer's state and federal complaints concern the same acts – his salary reduction and removal from the assistant athletic director position – the federal court ruled. Both complaints demanded the same relief: money damages. Both complaints therefore assert the same causes of action, and the federal court ruled res judicata applies.

The athletic trainer countered that the state court never considered the contractual and promissory theories of liability he raised. Indeed, the court ruled, the athletic trainer didn't assert these theories of liability in the state court. However, the court explained, "res judicata is not limited to the specific issues raised and decided in the prior proceeding and also bars matters that could have been raised and decided in the prior proceeding." Because the athletic trainer could have claimed breach of contract and promissory estoppel in the state court, res judicata bars those claim in federal court.

The federal court thus dismissed the athletic trainer's lawsuit against the university.

LAW 101

State Practice Acts: How To Read Them and What To Look For, Part II

This is the second article of a two-part series on state practice acts, how to read them and what to look for in them. In the first part, published in the Winter 2021 *Sports Medicine Legal Digest*, we focused on definitions and licensure. In part two, we will dive into regulatory bodies and disciplinary issues.

As highlighted in part one, state statute reflects legislation passed by the state legislature and signed by the governor. State regulatory agencies, part of the executive branch, are charged with interpreting and implementing these laws through guiding documents known as rules and regulations.

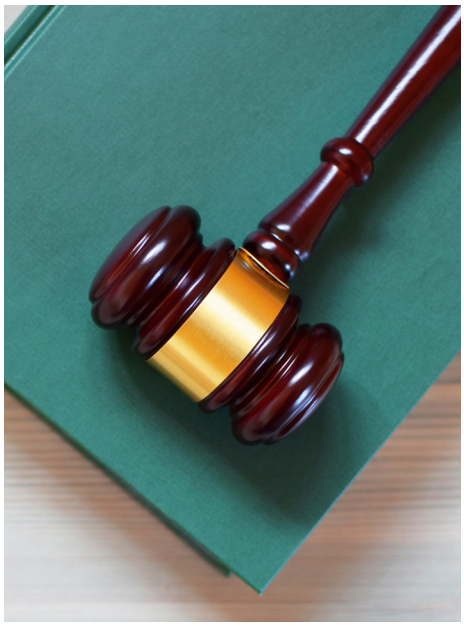
It's important to understand that all states – except for California, which doesn't mandate certification for athletic trainers – have a different governing statute that applies to ATs. Additionally, the implementation of even similar laws through regulation guidance and interpretation vary by state.

To assist athletic trainers in understanding patient care under state practice acts, this installment of LAW 101 will exclusively cover regulatory bodies and discipline.

Regulatory bodies are independent governmental agencies established to set standards in a specific field of activity, or operations, and then enforce those standards. Most states with a state practice act establish a board of athletic trainers to oversee athletic training in their state.

Discipline pertains to how the board will address violations of the state practice act.

This article will provide sample language from different states to provide a better understanding



of how state practice acts vary and where to look for key elements in your state's statute. These examples were selected at random for educational purposes.

For more information about state practice acts, visit NATA's interactive map that identifies the athletic training regulatory boards in each state at **members.nata.org/gov/state/regulatory-boards/map.cfm.**

Regulatory Bodies

Composition of Board

Sample Language (Ohio):

There is hereby created the Ohio occupational therapy, physical therapy, and athletic trainers board consisting of sixteen residents of this state, who shall be appointed by the governor with the advice and consent of the senate. The board shall be composed of a physical therapy section, an occupational therapy section, and an athletic trainers section.

(1) Five members of the board shall be physical therapists who are licensed to practice physical therapy and who have been engaged in or actively associated with the practice of physical therapy in this state for at least five years immediately preceding appointment. … (2) Four members of the board shall be occupational therapists and one member shall be a licensed occupational therapy assistant, all of whom have been engaged in or actively associated with the practice of occupational therapy or practice as an occupational therapy assistant in this state for at least five years immediately preceding appointment. … (3) Four members of the board shall be athletic trainers who have been engaged in the practice of athletic training in Ohio for at least five years immediately preceding appointment. One member of the board shall be a physician licensed to practice medicine and surgery in this state. Such members of the board shall sit on the athletic trainers section. (4) One member of the board shall represent the public. This member shall sit on the board and shall attend each year at least three meetings of the physical therapy section, three meetings of the occupational therapy section, and three meetings of the athletic trainers section.

Board Mission Statement

Sample Language (Idaho):

To promote the public health, safety, and welfare and to promote the highest degree of professional

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conduct on the part of athletic trainers. The licensure of persons offering athletic trainer services to the public helps to assure the availability of athletic trainer services of high quality to persons in need of such services.

Board Election

Sample Language (New Mexico):

At the first Board meeting of each calendar year the Board shall elect, by majority vote of the members present, a chairman and vice chairman. Officers will serve a one year term of office. A vacancy, which occurs in any office, shall be filled, by a majority vote of the Board members present, at the first Board meeting following the vacancy.

Public Comment

Sample Language (Florida):

The Board of Athletic Training invites and encourages all members of the public to provide comment on matters or propositions before the Board or a committee of the Board. The opportunity to provide comment shall be subject to the following:

1. *Members of the public will be given an opportunity to provide comment on subject matters before the Board after an agenda item is introduced at a properly noticed board meeting.*
2. *Members of the public shall be limited to five (5) minutes to provide comment. This time shall not include time spent by the presenter responding to questions posed by Board members, staff or board counsel. The chair of the Board may extend the time to provide comment if time permits.*
3. *Members of the public shall notify board staff in writing of his or her interest to be heard on a proposition or matter before the Board. The notification shall identify the person or entity, indicate its support, opposition, or neutrality, and identify who will speak on behalf of a group or faction of persons consisting of three (3) or more persons. Any person or entity appearing before the Board may use a pseudonym if he or she does not wish to be identified.*

Discipline

Declaratory Orders

Sample Language (Colorado):

The purpose of this Rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedure Act at section 24-4-105(11), C.R.S.

A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.

B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon such petition. If the Director determines that she will not rule upon such a petition, the Director shall promptly notify the petitioner of her action and state the reasons for such decision.

C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:

1. *Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.*
2. *Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.*
3. *Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.*
4. *Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.*
5. *Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.*

Regulatory Compliance

Sample Language (Indiana):

(a) A licensed athletic trainer must be familiar with and adhere to all rules and standards for the competent practice of athletic training as established by the board. (b) A licensed athletic trainer must educate those whom they supervise in the practice of athletic training with regard to the standards of competent practice of athletic training and encourage their adherence to the standards. (c) A licensed athletic trainer must not present false information to the board on any application or other document or in any investigation or proceeding pending before the board. (d) A licensed athletic trainer must develop a plan for care for each athlete/patient and shall be responsible for the plan implementation and modification. The licensed athletic trainer shall consult with the referring practitioner regarding any contraindicated or unjustified treatment. (e) A licensed athletic trainer must take reasonable action to inform the supervising medical doctor, osteopath, podiatrist, or chiropractor in cases where an athlete's physical status indicates a change in medical status. (f) A licensed athletic trainer must provide athletic training services without discrimination based upon race, creed, sex, religion, national origin, age, athletic ability, disease entity, social status, handicap, or financial status. (g) A licensed athletic trainer must preserve the confidentialities of privileged information to a third party not involved in the athlete's/patient's care unless the athlete/patient consents to such release or release is permitted or required by law.

Unprofessional Conduct

Sample Language (Delaware):

Unprofessional conduct shall mean the departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which actual injury to a patient need not be established.

12.1 Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been established or maintained.

12.2 The Physical Therapist or Athletic Trainer who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

12.3 The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs prohibited activities is guilty of unprofessional conduct.

12.4 The Physical Therapist, Athletic Trainer, or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

12.5 Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

12.6 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

12.7 Inaccurately recording, falsifying, or altering a patient or facility record.

12.8 Committing any act of verbal, physical, mental or sexual abuse of patients.

12.9 Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these Rules and Regulations.

12.10 Failing to supervise individuals to whom physical therapy or athletic training tasks have been delegated.

Crimes

Sample Language (Maryland):

(1) On the filing of certified docket entries with the Board by the Office of the Attorney General, the Board shall order the suspension of a license if the licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside. (2) After completion of the appellate process, if the conviction has not been reversed or the plea has not been set aside with respect to a crime involving moral turpitude, the Board shall order the revocation of a license on the certification by the Office of the Attorney.