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LEGAL DIGEST

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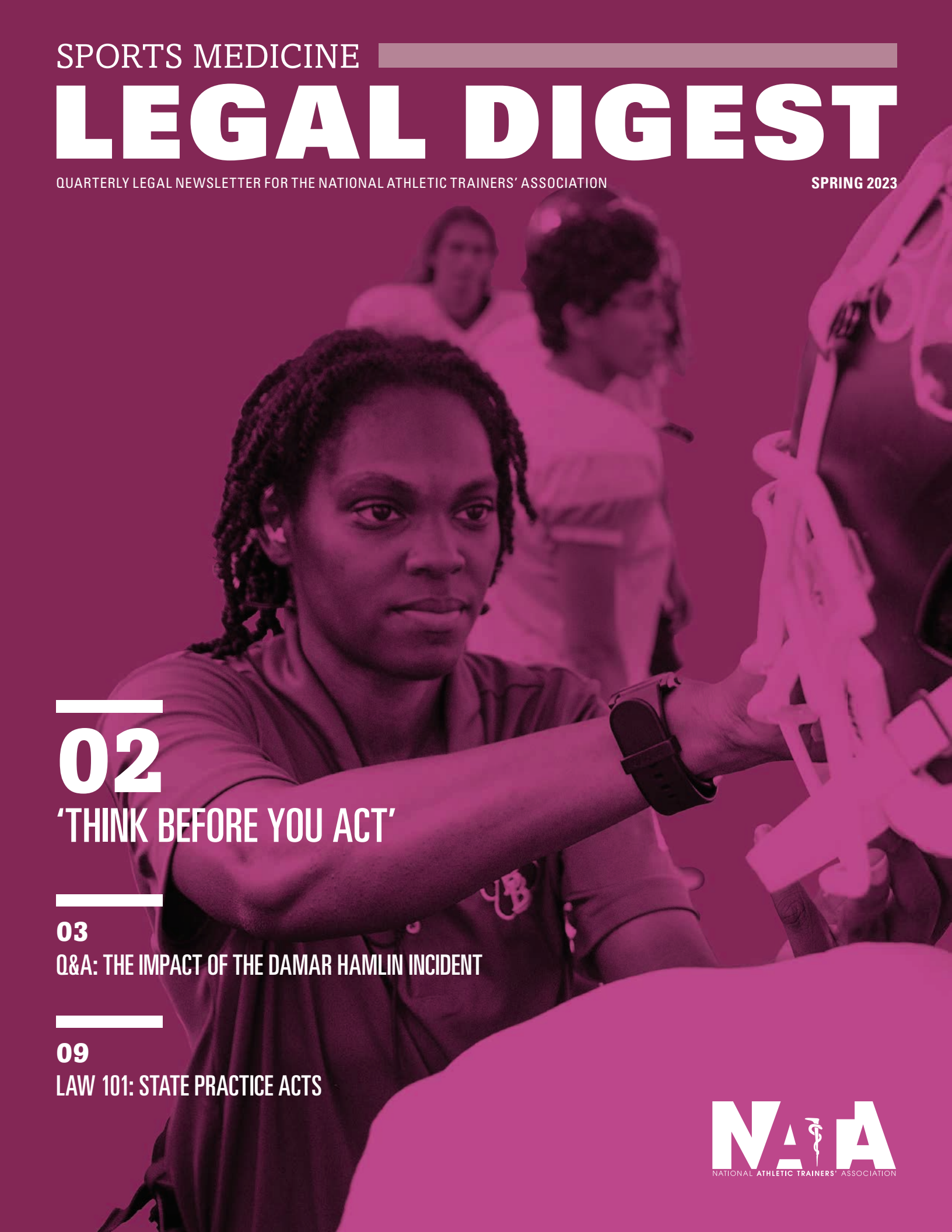

NATIONAL ATHLETIC TRAINERS' ASSOCIATION

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REVIEWED BY

The content included in this issue was reviewed by the NATA Editorial Advisors, Pat Aronson, PhD, LAT, ATC; A.J. Duffy III, MS, AT, PT; Michael Goldenberg, MS, ATC, CES; Eric McDonnell, MEd, LAT, ATC; Tim Weston, MEd, ATC; and Cari Wood, ATC; and members of the NATA Professional Responsibility in Athletic Training Committee.

'Think Before You Act'

New ICSM resource provides ATs with considerations to review when making decisions related to athlete participation, especially regarding unseen concerns

BY BETH SITZLER

When an athlete is physically injured and in pain, the decision to hold them from participation or modify their activities can be obvious. But what about those concerns that you can't see but can impact health and well-being just as much, such as an eating disorder or mental health concern?

To assist athletic trainers in the decision-making process, the NATA Intercollegiate Council for Sports Medicine created the "Sport Activity Participation: Considerations When Removing a Student Athlete from Participation" checklist. This resource includes questions to guide the AT through the decision-making process, ensuring not only that the athlete's safety is the top priority, but that the decision was thoroughly considered and the appropriate parties were involved.

"It's not a policy; it's a checklist of guidelines," said ICSM Division I Chair Jennifer O'Donoghue, PhD, ATC, CSCS, who created the NATA checklist based on a similar checklist she created for her staff at North Carolina State University. "It's strictly, 'Let's think about things before we do them' – so, think before you act."

O'Donoghue said the idea for the checklist came from an incident involving a student athlete and disordered eating at her university.

"I had a staff member come to me, and she had an individual on the team who she had overheard [her say she] had not been fueling, and … they were very weak due to that and she became dizzy and lightheaded," O'Donoghue said. "[The athlete] didn't think it was a big deal. It's just, 'Oh, I haven't eaten anything today,' and then come to find out, the athlete would maybe eat once a day. The staff member asked, 'What do I do? This has, I found out, been going on,' and I said, 'You need to ask yourself, is it safe for this individual to participate?'

"[In a situation like this,] this is something you can't see, so you need to think, if this person had an ankle injury, or any musculoskeletal injury you could visibly see, you're going to evaluate if the person can participate fully, participate with modifications or will the person need to withheld from participation. In this case, the person wasn't doing what they needed to do in order to participate fully. So you need to base your justification for pulling them, modifying them, getting them further assistance based on what is best practices and what could happen."

Jason Montgomery, a higher education attorney and former NCAA investigator, said state and federal courts generally don't view sports participation as a right of the athlete, meaning they can be removed from competition for any reason. However, liability does exist if an argument could be made about a decision impacting potential future earnings – something that could come into play in the coming years due to name, image and likeness.

"In the past, it was very clear that there was no recourse for an athlete, and I think that's going to continue to be the case at most levels – that it is a voluntary intercollegiate activity whereby it's not a fundamental right that's being asserted to participate in athletics," Montgomery said. "Where it gets a little bit more tricky is when someone is earning compensation as a result of their property interest in participating.

"So, theoretically, if someone was withheld without their permission and could show some sort of damage from that, they may be able to make an assertion against the individual withholding that they withheld them improperly and this then deprived them of a property right in participation."

Montgomery said courts have so far rejected arguments of property right, adding that the possible threat of liability shouldn't prevent ATs from intervening, especially if proper steps have been taken that follow existing policies and the necessary entities are involved.

"Generally, in terms of liability, more liability is on not pulling someone and having them injure themselves as a result of a physical condition that they had, even if it's a mental condition that then manifests itself into potential harm," Montgomery said. "That's a simple kind of negligence evaluation – what duty you had to the athlete in order to determine their ability to participate, whether you breach that duty, whether that breach caused an injury and then what the damages were. Most times, in these situations, it's a simple negligence claim that's levied, and then the question is, did the athletic trainer operate in accord with the duty they owed to the athlete? Most often, the duty is actually to remove them from competition as opposed to erring on the side of allowing them to compete."

O'Donoghue said the checklist, which was influenced by conversations with her university's general counsel, outlines the various avenues ATs need to explore during the decision-making process as well as the other health care providers who need to be involved, such as their team physician and mental health providers. Some questions the checklist asks the AT to consider include:

- Has an evaluation and clinical diagnosis been performed?
- Is a referral needed?
- Is diagnostic testing needed?
- Can activity be allowed if limitations or modifications are implemented?
- Is this a short-term or long-term removal?
- Will the athlete be able to return?

"Basically, are your decisions being made with consistent or good-quality evidence?" she said. "And that's looking at comorbidities, exercise, cognitive performance, psychological and physiological responses. So you're ultimately thinking, 'what if? what could?' not just now, but in the future."

By being thorough in their decision-making, following best practices and involving the necessary parties, athletic trainers can do what's in their athlete's best interests while also keeping themselves and their institutions safe from liability.

"Oftentimes, athletics trainers are put in difficult situations to have to make determinations, and I do think that the courts and most institutions

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Read More on the Blog

Read more about the impact of holding an athlete from participation as well as other mental health considerations in an accompanying post on the NATA Now blog, **www.nata.org/blog.**

Q&A

THE DAMAR HAMLIN INCIDENT: ANALYZING THE IMPACT

As you see below, this is not your ordinary ***Sports Medicine Legal Digest*** Q&A – in several ways.

First, while we normally interview just one person, we interviewed three this time.

We also chose a topic that's very much in the news: The response by medical professionals, including athletic trainers, to Damar Hamlin suffering cardiac arrest during the Buffalo Bills versus Cincinnati Bengals NFL football game Jan. 2.

As Hamlin thankfully recovers, we are gaining a greater understanding of the role that medical professionals, including both those immediately at the scene and those at the hospital to which Hamlin was transported, had in not only stabilizing him, but saving his life.

In this Q&A, Rod Walters, DA, ATC, a member of the NATA Professional Responsibility in Athletic Training Committee, provides a clinical perspective; Dylan Henry, Esq., and Kacie Kergides, Esq., of Montgomery, McCracken, Walker & Rhoads, provide a legal perspective; and NATA President Kathy Dieringer, EdD, LAT, ATC, provide an advocacy/public interest perspective on the impact of Hamlin's case.

Rod Walters, DA, ATC

Insight From Rod Walters

Q. How did the medical personnel determine that Damar Hamlin had suffered cardiac arrest after collapsing on the field?

I am not at liberty to discuss this specific situation, but I think from what we have all read, there are some great takeaway points as we all review our situations. Training in CPR and AED prepares professionals to identify A-B-C's of CPR to rapidly assess a patient and implement appropriate care. While this incident garnered significant media attention, the important fact to remember is every sporting activity, whether

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practice or game, and every recreational activity should incorporate an emergency action plan (EAP) to address care in the event of an accident. The basics of emergency care incorporates EAPs including location of equipment, roles of health care team and responders, appropriate training and further planning specific to location of equipment and appropriate steps. The question I hope every parent, administrator, coach and athletic trainer is asking is what would happen at my school – what would our response be?

Q. How important was emergency training in this incident?

A basic tenet of care for athletic trainers are EAPs. They must be developed specific to each venue. They must be committed to writing, posting and sharing with all stakeholders. EAPs must be practiced and repeated as often as needed. Incorporation of medical timeouts also assist to review the EAP and plan for in-practice or in-game incidents. Failing to plan is planning to fail. (Read more about EAPs in the PRAT column on p. 10).

Insight From Dylan Henry and Kacie Kergides

Dylan Henry, Esq.

Kacie Kergides, Esq.

Q. In an emergency situation, such as the Damar Hamlin situation, what potential legal liabilities do ATs face?

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'THINK BEFORE YOU ACT' *continued from page 03*

understand that athletic trainers should have some latitude in how they're addressing the needs of their athletes," Montgomery said. "And so, I'll emphasize this again, the risk really is allowing someone to play versus not."

Although the checklist was created with athletic trainers in the collegiate setting in mind, O'Donoghue said any athletic trainer can use it to ensure they are taking everything into consideration when determining participation for their patients.

"The crux of this can be used anywhere, especially because it allows you to bring in other professionals, clinicians and stakeholders, so you can modify this checklist to meet the needs of where you are practicing," she said.

For more information and to access the "Sports Activity Participation: Considerations When Removing a Student Athlete from Participation" checklist, visit **www.nata.org/professional-interests/job-settings/college-university/resources.**

Learn More at NATA 2023

The 74th NATA Clinical Symposia & AT Expo June 21-24 in Indianapolis will provide attendees a deep dive to into a number of topics of interest to the profession. The following are sessions that cover legal and ethical considerations in sports medicine. Learn more about NATA 2023 programming and register today at **convention.nata.org**.

- **Legal Depositions in Sports Medicine**
  PRESENTERS: STANLEY HERRING, MD, FAMSSM, AND KEVIN GUSKIEWICZ, PHD, ATC
  In today's litigious society, it is critical for athletic trainers to have an understanding of the legal system and how to perform in a legal deposition. This session will simulate a formal legal deposition with a trial attorney with extensive experience in sports medicine cases, interviewing an athletic trainer and team physician regarding their care of a fictitious athlete who sustained a concussion with complications secondary to initial care. The attorney will stop at different points in the deposition to provide feedback to attendees on rationale for lines of questioning and appropriate and inappropriate responses.

- **Using the NATA PRAT Case Studies for Advancing Athletic Training Practice**
  Presented by the NATA Professional Responsibility in Athletic Training Committee
  PRESENTERS: KENDALL SELSKY, DHSC, LAT, ATC, AND JEFFREY SCZPANSKI, MED, ATC
  Athletic trainers regularly face challenging decisions that require the careful application of legal, ethical, regulatory and professional standards (LERPS) to optimize patient care and organizational well-being. These can contribute to role strain for the athletic trainer. By understanding how individuals and groups can implement the use of focused PRAT case studies, athletic trainers can enhance their ability to apply LERPS to their practice to improve the use of evidence-based athletic training, optimize professional satisfaction and reduce professional role strain. The session will include mini-lectures on the background of LERPS and interactive sessions using several case studies as a guide.

- **Avoiding Borderline Patient Care Practices to Stay Successful and Ethical**
  Presented by the NATA Committee on Professional Ethics
  PRESENTERS: SUZANNE KONZ, PHD, ATC, CSCS, AND PAUL RUPP, MS, LAT, ATC
  The role of the athletic trainer continues to evolve in an ever-changing health care landscape. Routine practices of many athletic trainers, including, but not limited to, social media use; cell phone usage; and communication with minors, can place an athletic trainer in conflict with the NATA Code of Ethics. Acts that seem benign can compromise a member's status due to the NATA Code of Ethics and regulatory body violations. This session will provide information on common borderline unethical actions and an overview of the COPE adjudication process and its importance to professional practice by the athletic trainer.

COPE COLUMN

Is It Wise To Use Text and Apps for Communication?

BY SUZANNE M. KONZ, PHD, ATC, CSCS, NATA COMMITTEE ON PROFESSIONAL ETHICS CHAIR

As athletic trainers, we are uniquely positioned to communicate with our patients and colleagues through various forms of media. Some athletic trainers utilize texting and direct messaging (DM) apps, such as Snapchat and WhatsApp, to communicate with their patients. The use of these communication forms can be positive but potentially create a slippery slope, especially when it comes to professional boundaries and professional conduct for AT.

AT should be aware of the dangers of communicating with patients through non-traditional methods, such as texting and DM apps. ATs should consider that texting or using an app to communicate could violate federal or state law, practice acts, membership standards and codes of ethics if they are not careful. Most athletic trainers rely on their own mobile devices to support their work productivity.

So, does using text and DM apps violate the Health Insurance Portability and Accountability Act (HIPAA)? Texting is not a part of HIPAA regulations, but how electronic communication takes place is. Electronic communication is acceptable as long as no personal identifiers are included, it's authorized by the patient who has been warned of the risk of electronic communication and it meets the minimum standards and safeguards. Both parties must be aware of the risks involved when using these tools to communicate about injuries, illnesses and treatment plans. We have no control over the final receiver of our message. Unfortunately, wrong numbers, wrong users, forwarded messages, intercepted messages and unauthorized access are part of communicating via text or DM. The communications also linger with the service provider. For these reasons, communicating personal health information by standard, non-encrypted, non-monitored and noncontrolled texts or DMs violates HIPAA.

Using texts and direct messaging apps also breaks a formal barrier between clinicians and patients. Initially, the communication starts as professional and patient-driven, but that communication may change over time.

For example, a patient texts their AT outside work hours to ask a question about their injury, which leads to additional texting about personal matters, just to be polite. Although this is not necessarily harmful in itself, it does illustrate how easy it can be for an AT to cross the line between professional boundaries and personal relationships. A violation of professional boundaries can create an environment where an inappropriate relationship between the athletic trainer and patient develops. The relationship line between the two parties becomes muddy and may be misinterpreted.

The most effective way for an AT to avoid violating professional boundaries while communicating with patients is by setting clear expectations at the beginning of treatment, prior to any contact outside of scheduled appointments. Furthermore, if contact outside of scheduled appointments needs to occur, that communication must remain professional. ATs also need to be aware that some athletes may feel uncomfortable sharing or communicating personal information via text or DM. Professional levels of communication are absolutely necessary when dealing with minors.

Are health care providers allowed to communicate with minors about their health care plans? Can we text or use messaging apps to do so? Knowing your state's regulations is key. Most minors need a personal representative to make decisions about their medical care in most states and for most purposes. In most cases, parents or guardians are designated as the decision-makers regarding the health care of the minor. So, does using text or messaging apps violate that process? Some states have additional laws surrounding adolescent health privacy, protecting their privacy regarding pregnancy, sexual activity, mental health, substance abuse and HIV status. Furthermore, if these state privacy laws are more stringent, they supersede federal regulations.

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With any catastrophic sports injury case, athletic trainers could be exposed to legal liability, specifically a claim of negligence. Negligence is the failure to conform to the standard of care that a reasonably prudent person would have exercised under similar circumstances. Therefore, we would review whether the athletic trainers treating the athlete treated them in accordance with the standard of care that other athletic trainers would have exercised in the same or similar situation.

In a negligence claim, the plaintiff, who is typically the athlete in these cases, must prove: 1) the athletic trainer owed a duty of care to the athlete; 2) the athletic trainer breached that duty; and 3) that breach 4) caused harm or damage to the plaintiff. Shorthand for these elements of negligence are: duty, breach, causation, damages.

In these catastrophic sport injury cases for athletic trainers, duty and damages are almost always present. It is well established that an athletic trainer owes a duty to the athletes, and it is usually clear that the athlete sustained some harm (even if the extent of that harm is disputed). The legal battleground and crux of these cases lies in attacking the breach and causation elements – evaluating whether the athletic trainer breached that duty and whether that breach caused the athlete's injury. Theories of breach include failure to conduct adequate preparticipation screenings; failure to warn, educate and train; premature return to play; mis-management or misdiagnosis; failure to evaluate or monitor.

In a situation similar to Hamlin's, the theories of breach would have most likely been that the athletic trainers failed to properly recognize and respond to the cardiac event or, when responding, did not administer proper care when treating the athlete. Then, the analysis would have been, "Did that failure to administer the proper care cause further harm or damage?"

Fortunately, the athletic trainers on the field that night acted prudently and quickly, and saved Damar Hamlin's life.

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Q. In an emergency situation, what potential legal liabilities do other medical workers treating an athlete face?

The other medical providers treating the athlete (team physicians, emergency medical services personnel) could face the same claim: negligence. (Note: it varies from state to state, but a plaintiff must bring a claim for negligence between two to four years, so by 2025 to 2027.) They would be held to their professional counterparts – that is, how a reasonably prudent physician or EMS would have exercised the care in the same or similar circumstance.

Q. In emergency situations, such as Hamlin's, are there different standards in terms of risks and legal liabilities?

The fact that it was an emergency situation would absolutely be taken into consideration when evaluating legal liability. As described above, under the legal liability theory of negligence, the potential defendant is evaluated and analyzed compared to how a reasonably prudent person would have acted in the same or similar circumstance. Therefore, the standard would be how a medical provider would have acted in a similar emergency situation.

Of course, in emergency situations, it should be recognized that emergency medical providers are often working in high-pressure, time-sensitive situations and may not have all the information or resources needed to make the best medical decisions.

This is why having established protocols and procedures for emergency situations (also known as emergency action plans) in place and following those plans to the letter is very important for not only an athlete's health, safety and welfare, but also to help mitigate legal liability.

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APPS FOR COMMUNICATION? *continued from page 05*

For ATs to meet federal and state standards regarding HIPAA-compliant care and the maintenance of appropriate professional boundaries with their patients, they must clearly understand what constitutes appropriate communication with patients and what types of communication are unacceptable. ATs should always be mindful of the importance of maintaining professional boundaries with their patients. Texting or using social media to communicate with patients can compromise that boundary.

CASE SUMMARY

Federal Court Rules in AT's Lawsuit Alleging Retaliation for Reporting Coach

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

An athletic trainer in New Jersey filed a lawsuit against a school district alleging that she was illegally demoted and subjected to a "hostile work environment," in retaliation for reporting that the school's football coach was giving painkillers to football players.

The athletic trainer, who also taught at the school, started to make internal complaints about the school's football coach. She asserted that the coach had given painkillers to the school's football players. These allegations were investigated by the local police, but the police decided not to pursue the claims further after the students denied receiving the painkillers and declined to cooperate.

Subsequently, the athletic trainer made a similar report to the federal Drug Enforcement Agency (DEA) but, according to court documents, the outcome of that effort is unclear, and the school district indicated it was not aware of the report when it was filed. The next year, the athletic trainer made yet another complaint about the football coach, alleging he had authorized unsafe treatment of the football players and had harassed her. Following that assertion, the athletic trainer resigned her position with the football team, allegedly as a result of harassment by the football coach.

The school district then hired an independent investigator to look into the allegations of the athletic trainer. During the investigation, the school district determined that the athletic trainer and coach shouldn't work together and it hired an outside contractor to perform that athletic trainer's duties regarding the football team. During that time, the athletic trainer wasn't demoted and suffered no loss in compensation. The athletic trainer's responsibility with the football team was restored after the football coach left the school.

Subsequently, however, the athletic trainer had her salary partially withheld for reasons that were unrelated to her complaints about the football coach, according to the school district. The school board withheld her salary increment because it determined she had allowed students to grade one another's tests in health class and also permitted students to use her personal vehicle to run errands. The athletic trainer didn't submit a rebuttal to these or other misconduct allegations and didn't report them to her union, according to court documents.

The athletic trainer first filed her complaint in the New Jersey Superior Court. The complaint included five counts: Counts 1 and 2 alleged a violation of the athletic trainer's free speech rights under both the federal and New Jersey constitutions; Counts 3 and 4 alleged hostile work environment discrimination and retaliation under the New Jersey Law Against Discrimination (NJAD); and Count 5 asserted breach of contract.

The school district had the case transferred to federal district court. The defendants moved

to dismiss the complaint. The court denied most of that motion, but did dismiss the Count 5 contractual claims. The court also noted that, "although the complaint cited the 14th Amendment in passing, it did not assert any direct 14th Amendment claim."

After discovery, both sides filed motions for summary judgment. The court first addressed the athletic trainer's motion for summary judgment, which it denied as baseless.

On the school district's motion for summary judgment, the court noted that summary judgment should be granted if undisputed facts show that the type of speech in which the athletic trainer engaged in as a public employee was not protected by the First Amendment.

In order to establish a retaliation claim under the First Amendment, the court explained that, in this case, the athletic trainer must allege that:

- Her conduct was constitutionally protected.
- The retaliatory action was sufficient to deter a person of "ordinary firmness" from exercising her constitutional rights.
- A causal link between the constitutionally protected conduct and the retaliatory action existed.

The court concluded, "Here, [the school district] focused on the first element, arguing that the athletic trainer's speech was pursuant to her job duties as a public employee and thus not protected by the First Amendment. First Amendment protection of a public employee's speech is limited in some respects. A public employee's speech is fully protected by the First Amendment when the employee speaks about matters of public concern in her capacity as a private citizen. When a public employee speaks pursuant to her official duties, however, that speech is not protected by the First Amendment."

The court, therefore, concluded that "for [the athletic trainer] to prevail on Counts 1 and 2, she must, as a preliminary matter, establish that she spoke as a private citizen on a matter of public concern and that her speech was thus protected by the First Amendment." The federal judge found that the athletic trainer did not.

The court opinion states: "The record reveals that the speech that [the athletic trainer] alleges led to retaliation against her consisted entirely of complaints up the chain of command. [The athletic trainer] repeatedly made written complaints to her immediate supervisor, the athletic director, and also spoke with other school board officials within the chain of command. There are no facts in the record to show that [she] spoke in a public forum in her capacity as a private citizen about her complaints regarding [the coach]. In fact, [the athletic trainer] herself testified that her complaints were made pursuant to her job duties as athletic trainer. Thus, because her speech was made pursuant to her job duties as a public employee, rather than as a private citizen, her speech was not protected by the First Amendment." Thus, the federal judge granted the school district's motion for summary judgment on Counts 1 and 2.5.

Next, the court turned to the hostile work environment under NJLAD (Count 3).

According to the court, "[s]exual harassment claims fall broadly into two categories: quid pro quo and hostile work environment. Here, the athletic trainer does not allege quid pro quo harassment, but alleges that the actions of the coach created a hostile work environment in a manner attributable to defendants."

Furthermore, the court said, "NJLAD prohibits sexual harassment that is sufficiently severe or pervasive to alter the conditions of [the athletic trainer's] employment and create an abusive working environment."

In order to succeed on a hostile work environment claim, the plaintiff must establish that "1) the employee suffered intentional discrimination because of his/her sex, 2) the discrimination was severe or pervasive, 3) the discrimination detrimentally affected the plaintiff, 4) the discrimination would detrimentally affect a reasonable person in like circumstances, and 5) the existence of respondent superior liability."

The court reasoned that the athletic trainer puts forward no argument related to her hostile work environment claim. Although the record is clear that the athletic trainer and the coach had a number of conflicts, that athletic trainer generally found him vulgar and unpleasant, and that she complained about him allegedly giving painkillers to the players, the record does not reveal any severe and pervasive harassment based on the athletic trainer's sex.

Therefore, the federal judge granted the school district's motion for summary judgment for Count 3.

Turning to the NJLAD claim, the court noted that to prove a retaliation claim, a plaintiff must show "1) that [they] engaged in a protected activity; 2) that [they] suffered an adverse employment action; and 3) that there was a causal connection between the protected activity and the adverse employment action."

However, the athletic trainer did not address this count in her briefs, which led the court to grant summary judgement on Count 4 in favor of the defendants as well.

Q&A, *continued from page 06*

Insight From Kathy Dieringer

Kathy Dieringer, EdD, LAT, ATC

Q. In the Hamlin incident, by all accounts, ATs performed at the highest professional level. Do you think this could serve as an example to athletic departments, athletes, parents and the general public of the importance of athletic trainers?

Without question, the Hamlin incident highlighted the importance of having an athletic trainer on your staff. Imagine if that same situation occurs at a high school or youth sports event, and it has and will. Unfortunately, at many of these events there is no AT to respond. Is there an AED close by? Is it accessible and do responders know how to use it? In these cases, who will care for that athlete and how quickly will that occur? The speed at which the Bills' AT recognized and began care (under 30 seconds) was critical to the positive outcome we are seeing. Every athlete deserves that, regardless of whether they are playing in the NFL or at a middle school.

Q. How important do you think the training and preparation that NATA advocates for was in the positive outcome of the Hamlin situation?

What we witnessed in the Damar Hamlin case was best practice recommendations in place, rehearsed and executed according to the highest standards. Starting with pre-participation examinations to the creation and rehearsal of the emergency action plan to the medical time out prior to competitions – all of this together ensures that everyone is on the

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Q&A, *continued from page 07*

same page should an emergency occur and all of the medical professionals have to respond. An athletic trainer's expertise in developing and executing the EAP, should the need arise, is apparent every time a critical response is needed. NATA is a proud participant in many inter-association consensus statements regarding emergency preparation and response that outline the best practice criteria established by the experts.

Q. Has NATA been approached for a lot of comment about this incident by the media?

NATA has been approached by many media outlets for comment on this incident, and I suspect that will continue. The reality is that this incident occurred on the world stage, bringing attention to the need to be prepared for such an emergency at any level of sports participation and the positive result that can occur when ATs are present. Professional sports has many resources at their disposal, but our focus is to address resources at all levels of sports and the need for ATs to provide the level of care every athlete deserves. Our advocacy will continue well beyond this event, but the Hamlin event has certainly amplified our efforts.

Q. Do you think the image of athletic trainers as invaluable medical care personnel will be raised even higher by this incident?

Yes, it already has. It is amazing to me how many people have commented on their recognition of athletic trainers after this event, people who I thought knew who we were and what we did have an even greater opinion of us. The overall level of respect and admiration of the profession is palpable throughout the athletic training community, and while that is greatly appreciated, our request is that schools and clubs use this event to take action to better protect student athletes. Elevating our image has been great, but image does not ensure that more athletes/patients have access to our services. It's time for the decision-makers to act.

Q. Does this incident demonstrate the importance of having athletic trainers at as many athletic events as possible?

Prioritizing the health and safety of student athletes by hiring athletic trainer(s) to put all of these best practices in place should be any school's/program's No. 1 initiative, especially after this incident. I've heard many times, "We can't afford an athletic trainer." Given this event and imagining that it could be one of your athletes, you can't afford not to.

To be clear: It also goes beyond the hiring of an appropriate number of ATs, but also sufficient equipment, budget and a culture of work-life balance that promotes an environment where ATs and your athletes can thrive. Protecting your student athletes as best you can should be every administrator's priority, and that starts with hiring an appropriate number of athletic trainers for your student athlete population.

CASE SUMMARY

AT Sues MLB Team For Discrimination

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

A former Major League Baseball athletic trainer has filed a lawsuit against his former team, alleging that the team discriminated against him by terminating him improperly on multiple grounds, including age, disability and sexual orientation.

The litigation is expected to be followed closely because it is one of the first cases involving a significant lawsuit by an athletic trainer against a major sports franchise.

The athletic trainer was employed by the baseball team for two decades, serving first as an assistant athletic trainer and then as head athletic trainer after the retirement of the team's longtime head trainer.

In a statement, the baseball team denied the allegations made by the athletic trainer in the lawsuit, asserting that his termination from the team was based on his performance and not for any illegal or impermissible reasons.

In his lawsuit, the athletic trainer claims that several influential members of the team's management team, as well as team medical staff and coaches, had become aware late in this tenure with the team that he was gay.

After signing a two-year employment contract, the team revised the athletic trainer's role in February 2020, and said he would work as an administrator and director for the care of players.

In July 2020, according to the lawsuit, the athletic trainer was attacked by two men while getting into his car at his apartment. The lawsuit claims that these men also stole his car.

Following the attack, the team's general manager and assistant GM told the athletic trainer that he would be placed on medical leave and his job would be there when he was ready to return. When the athletic trainer attempted to come back to work the next month, however, the team did not allow him to return, according to the lawsuit.

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AT SUES MLB TEAM FOR DISCRIMINATION *continued from page 08*

During the athletic trainer's continued absence, the lawsuit alleges, a team official made comments to other athletic training staff members that the athletic trainer "had either a gambling, alcohol or drug addiction that was related to the July carjacking." According to the lawsuit, none of those accusations were true.

In October 2020, the team informed the athletic trainer that he was being terminated as head athletic trainer. Two months later, the suit claims, an unnamed member of management told the athletic trainer that the club terminated his contract because of his sexual orientation.

The lawsuit argues that the athletic trainer's termination is in violation of the state's Human Rights Act, and says that athletic trainer suffers from severe mental anguish and emotional distress as a result of his termination. He is seeking punitive and monetary damages.

LAW 101

Does Your State Practice Act Enable You To Work To the Fullest Extent of Your Education and Training?

As health care professionals who specialize in the examination, diagnosis, treatment and rehabilitation of emergent, acute or chronic injuries and medical conditions, athletic trainers play an integral role on the inter-professional health care team. Unfortunately, many state practice acts are unnecessarily restrictive and prevent athletic trainers from practicing to the fullest extent of their education and training. In recent years, many state lawmakers have taken positive steps to modernize the statute and remove some of these burdensome barriers, but there is much more work to be done.

ATs are the best advocate for updates to the profession's governing laws and regulations. Below are some areas to review when evaluating the need for legislative or regulatory changes. While this is not a comprehensive list covering all facets of a state practice act, the information below will help guide you in conversations with colleagues, legislators and regulators as you consider what needs modernizing and how those efforts should be prioritized.

Workplace Setting/Patient Restrictions

Across the U.S., in addition to practicing with sports teams, athletic trainers work in performing arts, public safety, occupational health and with the armed forces.

FOR CONSIDERATION:

- Does your state practice act prevent you from working with patients who have injuries or conditions for which you have been educated and trained to treat?
- Does your state practice act limit where you can treat patients with injuries or conditions for which you have been educated and trained to treat?

Scope of Practice

The defined scope of practice outlined in a state's athletic training practice act and its accompanying rules and regulations, many times don't properly reflect the extensive education and training an athletic trainer must meet for certification. These barriers prevent them from providing their patients with the absolute best care.

FOR CONSIDERATION:

- Does your state practice act prevent you from utilizing specific modalities for which you have the proper education and training to use?
- Does your state practice act prevent you from administering lifesaving or injury mitigation/preventive care?

Reciprocity and Temporary Practice

An athletic trainer's ability to practice across state lines is critical to performing job duties, whether traveling with teams, helping to alleviate health care staffing shortages, or relocating for new job opportunities.

FOR CONSIDERATION:

- Does your state practice act allow athletic trainers licensed in another state to practice for a limited number of days, ensuring athletic trainers who are administering care while traveling with their teams are not acting outside of the confines of your state law? (Note: The Sports Medicine Licensure Clarity Act is only specific to professional liability insurance, not state licensing.)
- Does your state practice act allow athletic trainers licensed in another state to practice for a limited number of days to prevent employment barriers for ATs relocating to your state (such as military spouses) while they are waiting for their license application to be processed?

State practice acts dictate how you are able to administer care to your patients. Good practice acts recognize the extensive requirements for certification and continuing education and, therefore, empower athletic trainers to work to the fullest extent of their education and training.

As an athletic trainer on the frontlines, you are the best advocate to influence important governing laws and regulation. NATA provides extensive resources to help athletic trainers advocate for good legislation. Visit **www.nata.org/advocacy/state** to learn more.

PRAT COLUMN

The Importance of Preparing

The role of your emergency action plan in providing lifesaving care

BY ROD WALTERS, DA, ATC, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

The emergency action plan (EAP) is integral to the care of sports participants.[1] It is recommended that training and emergency care procedures be conducted annually at a minimum, but more frequent reviews should be conducted when warranted.

Emergency situations may arise at any time during athletic practices and events, and a plan must be in place to coordinate a well-orchestrated, focused plan of emergency care. Expedient action must be taken to provide the best possible care to the athlete in emergency and/or life-threatening conditions. Prudent coverage would include an EAP with appropriate responses for any activity offered by the institution.

In essence, even during classroom activities, the need exists for training of faculty and staff to deal with emergencies. Preparation for emergency and/or life-threatening conditions involves formulation of an EAP, proper coverage of events, maintenance of appropriate emergency equipment and supplies, utilization of appropriate emergency medical personnel and continuing education in the area of emergency response.

Accidents and injuries are inherent with sports participation. Roles specific to implementation of the EAP must be embraced by all parties, especially those involved in appropriate and immediate care. The following areas should be addressed based on established best practices.[1, 2]

- Institutions need venue-specific EAPs applicable to all facilities, including but not limited to cafeterias, classrooms, meeting rooms, weight rooms and practice and game fields. The EAP should be clear. It should be posted for accessibility in the event of emergencies.
- EAPs should be written and embraced by all involved personnel and required certification of all must be maintained. CPR and automated external defibrillator (AED) training are vital to the EAP, and current certification of all parties must be monitored.
- Venue-specific equipment should be included in the EAP and based on the risk of injury. The location of AEDs should be incorporated into the EAP.

- Communication plans should be included on the EAP with emphasis on activation of emergency medical service with critical cases.
- Incorporate into your EAP the hospital(s) for advanced care based on condition.
- EAPs should be reviewed in detail with all employees annually, at a minimum, and again quarterly for updates as needed.
- New employees should be trained on EAPs prior to conducting any activities.
- EAPs should be shared with senior administration, legal affairs and risk managers.

A medical timeout is designed to prepare athletic trainers, emergency medical services, team physicians and anyone designated as responsible for the medical well-being of athletes or spectators on game day to be aware, prepared and educated. Communication between these individuals can make the difference between a positive or negative outcome. While medical timeouts have been discussed for pre-event reviews, the same concepts are applicable to practices. Most failures of the EAP center around equipment, construction, weather and crowd flow/traffic. A pre-event meeting allows these issues to be addressed and appropriately planned for.

Reference

1. Andersen, J, et al., National Athletic Trainers' Association Position Statement: Emergency Planning in Athletics. *J Athl Train*, 2002. 37(1): p. 99-104.
2. Casa, D, et al., The inter-association task force for preventing sudden death in collegiate conditioning sessions: best practices recommendations. *J Athl Train*, 2012. 47(4): p. 477-80.

AT Prepare Offers a Library of Resources

Preparation can make all the difference when it comes to responding to a patient in need or an emergency situation. AT Prepare, a new webpage on the NATA website, features a host of resources available to the NATA membership to aid in these efforts, including NATA's position statement on emergency planning and official statement on medial timeouts. Learn more at **www.nata.org/atprepare**.