

SPORTS MEDICINE

LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

SPRING 2024

02

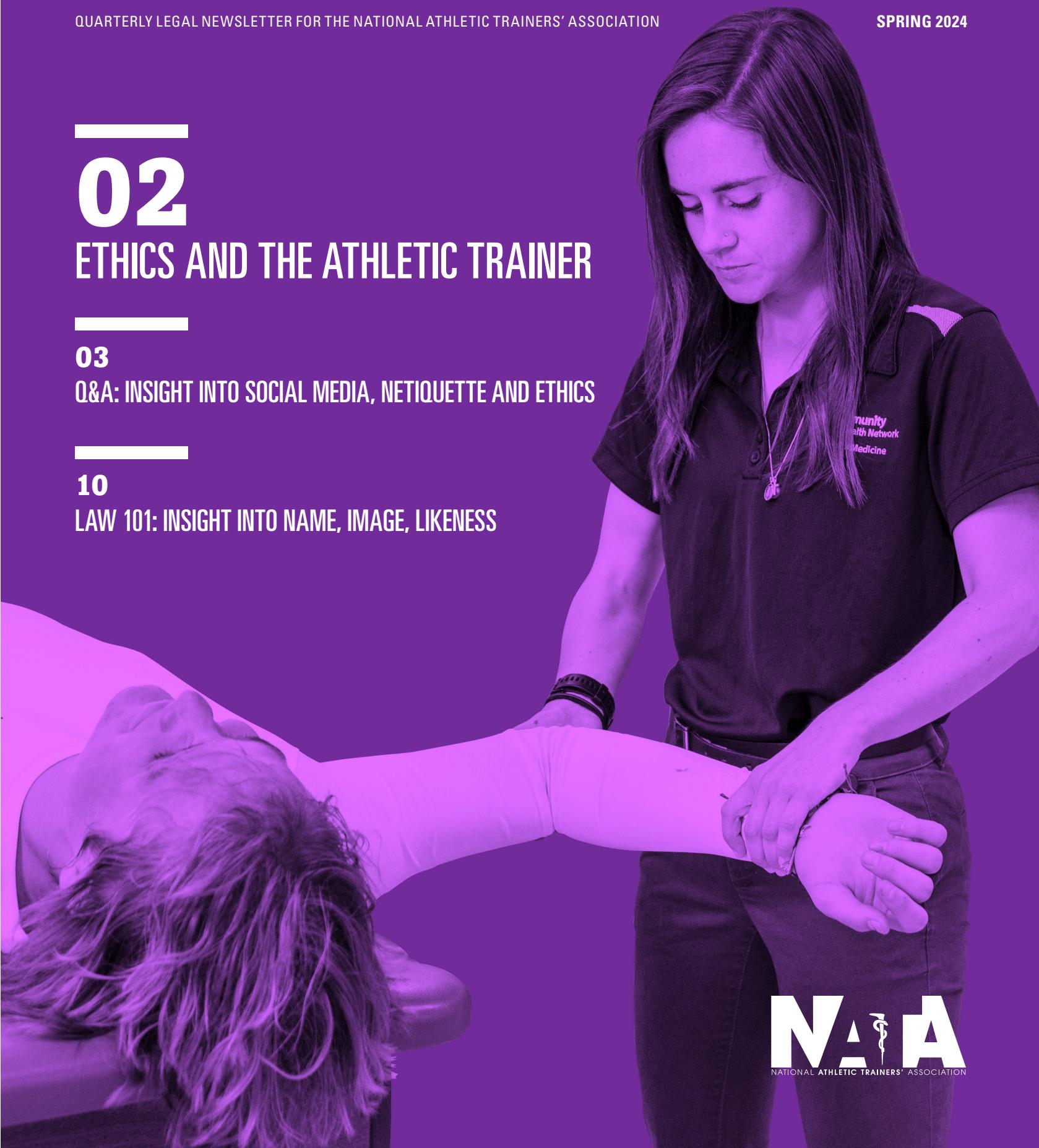
ETHICS AND THE ATHLETIC TRAINER

03

Q&A: INSIGHT INTO SOCIAL MEDIA, NETIQUETTE AND ETHICS

10

LAW 101: INSIGHT INTO NAME, IMAGE, LIKENESS



NATA
NATIONAL ATHLETIC TRAINERS' ASSOCIATION

IN THIS ISSUE

FEATURES

- 02** Ethics and the Athletic Trainer
- 06** From PRAT: A Safe Haven For Athletic Trainers
- 08** From COPE: The Ethical Tightrope: Weaving Personal Values, Professional Codes and Patient Well-Being in Athletic Training
- 10** LAW 101: Supreme Court's NIL Decision Leads to Meaningful Consequences, Uncertainty

CASE SUMMARIES & LEGAL COMMENTARY

- 04** Court Rules Against Alleged Victim in University Equal Pay Case
- 09** California Appeals Court Rules in Negligence Case

Q&A

- 03** Insight Into Social Media, Netiquette and Ethics

REVIEWED BY

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



Photo by NATA

Ethics and the Athletic Trainer

Setting boundaries is the first step to an ethical practice

BY KRISTIN CARROLL

Ethical behavior in athletic training may seem obvious, but there are plenty of pitfalls ATs can encounter. From social media and cellphones to documentation and more, ATs need to be cautious of their behavior inside and outside of their daily practice and make sure they are setting clear boundaries with those they treat and work with.

"[Ethical boundaries] need to be pretty concrete," said Suzanne Konz, PhD, ATC, CSCS, incoming chair of the NATA Professional Responsibility in Athletic Training Committee (PRAT) and former chair of the Committee on Professional Ethics (COPE). "The thing that is challenging is the varying layers we have, whether it's from an academic side or a clinical side. ... The idea of personal relationships and mentorship adds to this complexity."

Konz experiences this complexity in her daily life as a professor of kinesiology and biomechanics at Marshall University. She said her major boundary is never adding students on social media until after they have graduated, and then only on one predetermined social media channel, which she then limits to athletic training-related posts over sharing about her personal life. She also sets hard limits on

The "Sports Medicine Legal Digest" is © 2024 National Athletic Trainers' Association (NATA). All rights reserved.

NATIONAL ATHLETIC TRAINERS' ASSOCIATION, NATA and all other names, logos and icons identifying NATA and its programs, products and services are proprietary trademarks of NATA, and any use of such marks without the express written permission of NATA is strictly prohibited.

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY NATA, THE SPORTS MEDICINE LEGAL DIGEST ("DIGEST") IS PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND MAY INCLUDE ERRORS, OMISSIONS, OR OTHER INACCURACIES. THE INFORMATION

CONTAINED IN THE DIGEST MAY OR MAY NOT REFLECT THE MOST CURRENT LEGAL DEVELOPMENTS OR PRACTICE REQUIREMENTS. YOU ASSUME THE SOLE RISK OF MAKING USE OF THE DIGEST. *THE DIGEST IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE, OR BE A SUBSTITUTE FOR, PROFESSIONAL LEGAL ADVICE FROM AN ATTORNEY OR MEDICAL ADVICE FROM A PHYSICIAN. ALWAYS SEEK THE ADVICE OF A QUALIFIED ATTORNEY FOR LEGAL QUESTIONS AND A PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROFESSIONAL FOR MEDICAL QUESTIONS.*

MOREOVER, IN NO EVENT SHALL NATA BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR

CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH USE OF THE DIGEST, EVEN IF NATA HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. IF SUCH LIMITATION IS FOUND TO BE UNENFORCEABLE, THEN NATA'S LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITATION OF THE FOREGOING, THE TOTAL LIABILITY OF NATA FOR ANY REASON WHATSOEVER RELATED TO USE OF THE DIGEST SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO NATA FOR THE RIGHT (BY THE PERSON MAKING THE CLAIM) TO RECEIVE AND USE THE DIGEST.

Use of the Digest will be governed by the laws of the State of Texas.

the time students can spend in her office if they aren't discussing aspect of school, the profession or mentorship. Konz explained that, particularly for master's level students, they want to come in and chit-chat when she has other work to do.

"These boundaries should be very clear and delineated and you, as the AT, have to set that, because [people] will force themselves in," Konz said.

Ethical Practice Concerns

The most important aspect to maintaining an ethical athletic training practice is to put policies and procedures in place, said COPE Chair Paul Rupp, MS, LAT, ATC. These policies should reflect the NATA Code of Ethics and NATA Membership Standards as well as the practice act of the state in which an AT practices and, if applicable, school and district policies.

Without clear guidelines in place, ATs can find themselves wondering how to handle a situation. For example, Rupp said he knows of states and districts that don't allow athletes to return to play until they are clear to fully return to learn.

"You can't have the athlete go for a run, you can't have them ride a bike, you can't have any kind of exercise progression until they're fully back to the classroom," said Rupp, adding that this can put the AT in conflict with recovery best practices, which say that exercise and taking part in team activities have a huge influence on when and how athletes heal.

"So, what's the right thing to do? That's where our challenges come in," Rupp said.

ATs can play with semantics of a situation, if riding a bike, for example is a rehabilitation activity and not a "play" activity, Rupp said. ATs should keep within their district, state and employer's protocols while still doing what is best for the patient, which is where clear policies and procedures come in handy.

There are also ethical concerns around what should and shouldn't be allowed within the athletic training facility, with smartphones and tablets at the top of the list. Is technology a privacy concern or a tool to help athletes get through rehabilitation? What about service animals or pets?

"We can't deny any [Americans With Disabilities Act] compliant piece," Konz said about service animals. "But some people may be allergic or have a deep phobia based on traumatic experiences."

Rupp said he sees the benefit of a facility service dog to help calm and soothe patients, but ATs need to balance the needs of those with service animals with those who have a

fear or allergy to make sure the facility is safe for everyone.

On the side of technology, it's a little more difficult as athletes have music stored on their devices or, in the collegiate setting, need to do homework while they do less strenuous rehabilitation activities.

"You can make a policy that requires headphones and discourages phone conversations," Konz said.

On the other hand, Rupp doesn't allow phones in his facility as he can't be sure what athletes are taking pictures of and posting to their social media. He does see the benefit of technology for athletic trainers, especially in record keeping, but cautions ATs on posting to social media if they are documenting an athlete's recovery. It's also vital, he said, that ATs working with minors get written consent not only from the minor but also their parents before sharing anything. (See Q&A on this page for more about ethics in social media.)

"The [student athlete] can say they don't care, but then two weeks later, a university that was recruiting them could say, 'We saw your injury and now we're dropping your scholarship.' Now the parents are angry, and the [student athlete] is angry, and without written consent, it's their word against yours," Rupp said, adding that the situation goes back to having firm written policies in place.

Facing the Consequences

Athletic trainers have an ethical duty to report another AT they suspect of violating the NATA Code of Ethics, their state practice act or other organizational codes of conduct, Rupp said. If there is a question on if an incident is a violation, ATs can always fill out the form found at www.nata.org/committee-professional-ethics#ethics-form, which will trigger the investigation process.

In that process, the COPE chair will review the complaint to determine if it warrants a preliminary review panel (PRP) of two COPE members. Those members will review the information provided to determine if the allegations are true and if there is a violation of the NATA Code of Ethics and/or NATA Membership Standards. If the PRP determines there is a violation, a judicial panel (JP) of three COPE members is convened to investigate further. If the JP finds there was a violation, it will assign appropriate sanctions, which the COPE chair will communicate to the member via certified letter. The full process can be found at www.nata.org/sites/default/files/ethics_complaint_process_2023.pdf.

continued on page 04

Q&A

INSIGHT INTO SOCIAL MEDIA, NETIQUETTE AND ETHICS



Paul Rupp,
MS, LAT, ATC

Social media and netiquette can be quite problematic when it comes to ethics, so it's important for athletic trainers to be knowledgeable and aware of new trends in this area. To make sure that ATs better understand and are following the NATA Code of Ethics, we

turned to Paul Rupp, MS, LAT, ATC, chair of the NATA Committee on Professional Ethics, for further insight.

Q. You wrote a column in the November 2023 NATA News about social media, new technology, netiquette and ethics. Why did you think this issue was important to discuss with athletic trainers at this time?

The increasing number of social media postings is a contributing factor to the rise in reported NATA Code of Ethics (COE) violations to the NATA Committee on Professional Ethics (COPE). Specific modes of interaction on social media platforms exhibit a lack of support and civility. Any subset of a society contains a reflection of that society. NATA is not an exception. Everyone must take steps to improve their ability for effective communication. The act of communication involves the transmission of information as well as its reception. Some individuals exhibit impulsive tendencies and derive pleasure from generating drama through their social media posts, regardless of whether they are in a defensive or offensive stance. "Liked" and "tagged" statuses on personal media posts are highly desirable. Social media's instant gratification has caused us to become excessively divisive. This weakens the association and athletic training profession.

continued on page 04

Q. Do you think athletic trainers should receive more training and educational courses on different social media platforms?

It's necessary for society, at large, to place a larger emphasis on education and be reminded of the repercussions and obligations associated with their behavior on social media. Providing individuals with education on morals, ethics and internet civility is its primary objective. Already, we recognize the critical nature of maintaining confidentiality. ATs must remember that written permission is necessary before sharing any social media posts or presentation materials. One can avoid violating the COE by conducting oneself in a respectful manner, reflecting on what they would say in person and verifying their messages thoroughly prior to sending them.

Varying interpretations of written words (i.e., those bereft of inflection or body language) are possible. We must recognize that the information posted by another user may not precisely reflect the current state of affairs. It's intolerable to disparage or call someone derogatory names, in or out of social media. This is consistent with the moral and ethical obligation of the individual, particularly as a representative of the athletic training profession.

COPE makes every effort to provide the profession with education. At this moment, updated and new content is being compiled by committee members for publication on the NATA EducATE platform. Furthermore, we deliver presentations at symposiums and meetings at the national, state and local levels consistently.

Q. Will artificial intelligence (AI) and ChatGPT change the way athletic trainers conduct business? If so, how?

This is an excellent question. I will begin by stating that I'm not an authority on AI and technology and don't fully comprehend it. However, at our most recent state association meeting, we discussed the application of technology for record

continued on page 05

ETHICS AND THE ATHLETIC TRAINER *continued from page 03*

Potential sanctions include:

- Private reprimand
- Public censure
- Ethics education
- Probation of membership
- Loss of committee service
- Suspension of membership
- Expulsion of membership

Public sanctions are listed on the COPE Disciplinary Action Database at www.nata.org/cope-disciplinary-actions and in *NATA News*.

Rupp said one of the big misconceptions about what COPE does regarding ethical violations is centered on NATA membership.

"We can only adjudicate NATA members," he said. "We have [nonmember] athletic trainers out there doing a great job, but if they do commit an ethical violation, there's nothing NATA can do."

It's also possible for an AT to receive NATA censure, but not lose their licensure if their actions violate the NATA Code of Ethics but not their state practice act, Rupp said.

Rupp encouraged ATs to file complaints with their state licensure boards and the Board of Certification for the Athletic Trainer as well as NATA. If the violation is severe enough, though, Rupp said, COPE will pass the information along, regardless of NATA membership.

Other consequences ATs can face for ethical violations include loss of licensure and jail time for the most severe violations, such as sexual misconduct. NATA works with outside agencies on these actions, Rupp said.

"There are many cases where athletic trainers have been sued because of malpractice or boundary crossing behaviors that are absolutely atrocious and egregious," Konz said. "You could lose everything you ever built." ♀

CASE SUMMARY

Court Rules Against Alleged Victim in University Equal Pay Case

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.

In an equal pay case with implications for athletic trainers, an Alabama state court ruled that an alleged victim of discrimination didn't prevail in her lawsuit because she failed to offer sufficient proof that her job didn't require equal skill, effort and responsibility that would be comparable to a better-paying position.

The employee in this discrimination lawsuit was hired as a senior associate athletic director of internal operations by an Alabama university in 2018, at an annual salary of \$75,000. Three years later, the university constructively or actively terminated her for objecting to her pay structure.

The employee accused the university of violating the Equal Pay Act by committing wage

discrimination on the basis of gender and retaliating against her after she complained about her treatment. She also sued for gender discrimination under Title IX.

The employee reported to the director of intercollegiate athletics, supervised the director of compliance and others in the athletic department and assisted with supervising head coaches. She also was given another position of senior woman administrator (SWA). In that capacity, she was required to attend athletic conferences and NCAA meetings and was expected to deal with related duties to promote meaningful representation of women in the management of college sports.

Although the university had budgeted \$15,000 for the SWA position, it didn't add this benefit to the employee's base salary. The employee alleged that the university fired her just days after she complained verbally and in writing about not being paid for the position.

The employee's principal claim was that the university violated the Equal Pay Act and a similar state statute by paying her less than her male coworkers for equal or greater work.

Both the Equal Pay Act and Title IX generally prohibit employers from paying employees different rates on the basis of sex for equal work on jobs requiring equal skill, effort and responsibility that are performed under similar working conditions.

Under U.S. civil law, the employee had the burden of proving she was the victim of discrimination. Specifically, the employee had to demonstrate that the university paid her less than it paid men for performing comparable jobs under similar working conditions.

The university filed a motion for summary judgment to dismiss the case. It asserted that the employee couldn't make out a substantial case of wage discrimination because she didn't present sufficient evidence or documentation on higher paying jobs occupied by men. Specifically, the university stated she offered only four male comparators, the strongest of which was the deputy director of intercollegiate athletics who earned \$95,000.

Both employees held managerial and supervisory duties within the athletic department. Both positions required a master's degree and at least five years of relevant intercollegiate athletics experience, the court noted. However, the court found that the two jobs weren't comparable because the deputy director of intercollegiate athletics held broader and different responsibilities from the senior associate athletic director of internal operations. The court stated that "[b]road similarities between a small percentage of the comparator's job and plaintiff's job ... are inadequate."

The employee argued that the other position was a proper comparator because he received greater compensation even though she took on the SWA responsibilities. The court found, however, that the SWA position separated the two jobs because the other employee never served as the SWA or had a similar designation.

According to the court, the remaining three positions weren't comparable to the plaintiff's job. While the pay for men in those jobs was equal to or greater than her compensation, the jobs didn't require equal skill, effort and responsibility or performed under similar working conditions.

The court also addressed the employee's retaliation claim. The Equal Pay Act makes it unlawful for employers "to discharge or otherwise retaliate against an employee for filing a complaint or instituting proceedings relating to the [Fair Labor Standards Act]," the court noted. Under the retaliation provision of the Equal Pay Act, the employee needed to show that "1) she engaged in a statutorily protected activity; 2) she suffered an adverse action; and

3) the adverse action was causally related to her protected activity," the court explained.

The employee claimed that she engaged in a protected activity when she complained to university about not receiving equal wages and compensation for her role as SWA, and that her termination shortly thereafter established causation. The university denied that the employee complained to university officials, but the court ruled that the plaintiff was entitled to favorable inferences of fact on a motion for summary judgment.

Even if the employee had complained, the court asserted, there was insufficient evidence to show that the university's reason for terminating her "was merely a pretext to mask retaliatory actions." During the relevant time period, the university hired a new athletic director who decided to restructure the department. The restructuring included the elimination of the employee's position, distribution of the duties of the position and creation of a new position. A female employee was chosen over the plaintiff to fill the new position, so there was no gender discrimination, the court ruled, noting that an employer may fire an employee for any reason "so long as its action is not for a discriminatory reason."

The court also rejected the plaintiff's Title IX claim because the university showed that salaries in the athletic department were budgeted and advertised prior to hiring anyone for a position, so the compensation was set regardless of whether the applicant was a man or woman. The employee had argued that there were exceptions to the policy, but she was unable to establish that discrimination accounted for any difference in the salaries paid to male employees and her salary.

The lack of documentation on both sides was crucial in the court's ruling and in the disposition of the case. If the university was displeased with the employee's performance, it needed to document specific deficiencies. On the other hand, it was unclear if the employee followed up her verbal complaints with emails or other written documents to back up her claims.

It's important to note that this case is truly dependent on the documentation in possession of the court. In factually similar situations, it could be argued that it is unfair to give an employee an additional job responsibility without adequate compensation.

However, many employers do, in fact, add duties to one's job without additional compensation. In similar situations, this may be considered poor management by the university, which could lead to additional legal charges, such as breach of contract, as well as reduced retention rates down the road. 

Q&A, continued from page 04

keeping. Additionally, I had just attended a school staff meeting during which AI and its various applications for classroom work were discussed. All of this prompted me to consider the integration of record keeping and AI to inform our faculty and administration about patients who have suffered concussions and inform them on the return-to-learn progression. Is there a way to convey information regarding injuries to our coaches? I believe that this could occur in the foreseeable future. When utilizing these tools, we just must be mindful of HIPAA and FERPA regulations and the confidentiality of our patients' records and information.

Q. What are some specific do's for athletic trainers when it comes to netiquette?

Some netiquette do's and don'ts were imparted to us by our mothers and grandmothers. Demonstrate the same regard for others as one desires to be regarded. Double check that you are conveying precisely what you intend to say before clicking the send button. Differing opinions don't necessitate attacking an individual or their standpoints. Maintain an open mentality. Obtain the patient's (and guardian's, if they are a minor) written consent before using images or descriptions of medical information. When sharing photographs, be mindful of the background and any other elements that may appear inadvertently.

Q. What are some specific don'ts for athletic trainers when it comes to netiquette?

Don't attack another individual on the basis of their viewpoint or for any other reason. Name-calling and devaluing others is unacceptable. It's unwise to enter a discussion with a closed mind. Don't use derogatory language as this devalues not only the individual but the

continued on page 06

AT profession. Post no images, X-rays or other medical information regarding a patient without their written consent (or, in the case of a minor, the written consent of their guardian).

Q. Can you give a specific example of where ATs could run afoul of the NATA Code of Ethics when engaging in social media and perhaps not realize it?

One example would be that it's unethical to publish photographs or medical records pertaining to a patient's injury, evaluation or rehabilitation program without obtaining written consent from the patient or, in the case of a minor, their guardians. This would be a violation of the COE Principles 1, 1.3, 2 and 2.1.

Another example would be by engaging in a personal attack on social media. This would be a violation of the COE Principles 1 and 1.3.

Members can review the full COE at www.nata.org/membership/about-membership/member-resources/code-of-ethics.

Q. Is it good policy for ATs to always have separate personal and professional social media accounts? If so, why?

It might not be significant. It will be contingent upon the subject matter of your posts and the social media policies of your employer. Although you may possess a personal account, by specifying in your self-description that you are an athletic trainer or that you are employed as an AT by company or school X, among other things, you are essentially endorsing those organizations. Employers may impose regulations on social media accounts that you should be aware of; if you fail to adhere to such regulations, you can violate the COE Principles 2 and 2.1.

continued on page 07

PRAT COLUMN

A Safe Haven For Athletic Trainers

BY JEFF SCZPANSKI, MED, AT, ATC, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

The prevalence of mental health issues among athletic trainers is a topic that has gained increased attention in recent years. Mental health conditions, including burnout and substance use disorders, affect individuals across all professions, including allied health professionals. Johns Hopkins Medicine reports that an estimated 26% of Americans ages 18 and older – about 1 in 4 adults – suffers from a diagnosable mental disorder each year.¹ Many people suffer from more than one mental disorder at a given time. Depressive illnesses tend to co-occur with substance use and anxiety disorders.¹ Studies in the United States have shown that 10% to 15% of health care professionals will misuse substances during their lifetime.²

Burnout can affect all settings in the athletic training profession. Symptoms include emotional exhaustion, depersonalization of patients and decreased perception of personal accomplishment, which can lead to many physical, emotional and behavioral concerns. Several of the most common factors that cause burnout have been identified as work-life balance, role strain and difficulties in professional socialization.³

Athletic trainers, like anyone else, can face barriers when seeking help for mental illness or substance use disorders. Some of these barriers include:

Stigma: There is still a significant stigma associated with mental illness and substance use disorders, particularly within the health care professions. Athletic trainers may fear judgment or negative repercussions from colleagues or employers if they disclose their struggles.

Professional consequences: Athletic trainers may worry about the potential impact seeking help could have on their career, including concerns about licensure, job security and reputation.

Lack of time: Athletic trainers often have demanding schedules, making it difficult to prioritize seeking help for their own mental health needs. The long hours and intense workload can leave little time for self-care or attending therapy sessions.

Financial concerns: Athletic trainers may face financial barriers to accessing mental health care, particularly if their insurance coverage is limited or if they are concerned about the cost of treatment.

Limited access to confidential care: Athletic trainers may be reluctant to seek help from colleagues or supervisors due to concerns about confidentiality. They may also worry about the potential for breaches of privacy if they seek care within their own health care system.

Denial or minimization of symptoms: Like anyone else, athletic trainers may struggle with denial or minimization of their symptoms, which can prevent them from seeking help until their condition becomes severe.

Addressing these barriers requires a multi-faceted approach that includes reducing stigma, providing confidential and accessible mental health services, offering support and resources tailored to the needs of athletic trainers, and promoting a culture of self-care and wellness within the profession.

One Treatment Path

One such avenue of treatment has evolved from physician health programs. The Federation of State Physician Health Programs Inc. (FSPHP) is a national membership association of physician and health professional programs. FSPHP evolved from initiatives taken by the American Medical Association, the Federation of State Medical Boards, State Medical Societies/Associations and individual state physician health programs.⁴ The focus of these health programs is to provide confidential assessment, referral to treatment, resources and monitoring for physicians/health care professionals and those in training who may be at risk of impairment from mental illness, substance use disorders and other health conditions. When indicated, ongoing health monitoring by a professional health program provides trusted accountability that supports successful continuation or return to practice. Most importantly, state member programs provide a confidential, therapeutic alternative to discipline and have the support of organized medicine in their state, often through legislation,

exceptions to mandated reporting or other safe-haven provisions. In addition to working with participants, professional health programs provide education, outreach and advocacy to their medical communities in support of physician health and well-being.⁴

According to FSPHP, the District of Columbia and 47 states have a professional health program. Maine, Nebraska and Wisconsin don't have these programs. The following states specifically mention athletic trainers as being included in the professional health program: Connecticut, Delaware, Florida, Illinois, Michigan, Minnesota, Missouri, New Jersey, Ohio, Utah and Virginia.⁵ Professional health programs will take a referral from a peer athletic trainer who meets the regulatory, ethical and professional duty requirements to report a colleague. If an athletic trainer under the care of a professional health program is compliant with the requirements and treatment recommendations, disciplinary action is typically suspended. If an athletic trainer is noncompliant with the requirements and treatment recommendations, then due process would ensue.

Additional Treatment Paths

For athletic trainers in states that currently don't have access to a professional health program, here are some other resources:

Licensed mental health professionals:

This includes psychologists, counselors, therapists and psychiatrists who specialize in mental health and substance use disorders. They can provide individualized therapy, counseling or medication management.

Employee assistance programs (EAP):

Many organizations, including athletic departments, offer EAPs as part of their employee benefits. EAPs provide confidential assessments, short-term counseling, referrals and follow-up services to employees dealing with personal problems, including mental health and substance use.

Support groups: Support groups such as Alcoholics Anonymous, Narcotics Anonymous or group therapy sessions tailored to mental health disorders can be helpful. These groups offer peer support and understanding from individuals who have similar experiences.

Online resources and teletherapy:

With the advancement of technology, many mental health professionals offer teletherapy services, allowing individuals to seek help remotely. There are also online resources, forums and apps designed to provide support and resources for mental health and substance use disorders.

Primary care physicians: A primary care physician can offer initial assessments and referrals to mental health specialists, if needed. They can also monitor physical health conditions that may be related to mental health or substance use.

Specialized treatment centers: For more severe cases or specific needs, there are residential treatment centers, outpatient programs and rehabilitation facilities specializing in mental health or substance use disorders. These facilities offer comprehensive treatment plans tailored to the individual's needs.

Professional associations: Some professional sports leagues may have resources that an athletic trainer can utilize. NATA and many state associations offer the ATs Care Program for specific and initial support. You can learn more about the NATA ATs Care Program at www.nata.org/ats-care.

Athletic trainers aren't immune to the prevalence of burnout, mental health and substance use disorders. It's essential for athletic trainers to prioritize their mental health and seek help when needed. Breaking the stigma surrounding mental health and seeking support is crucial for overall well-being and performance. Removing barriers such as fear of losing a career or professional credential and license shouldn't stop an athletic trainer from receiving the care they need or referring a peer or coworker to appropriate resources. Athletic trainers have an ethical duty to hold themselves and others responsible for the protection, health, safety and well-being of the athletic trainer and their patients. 

References

1. Mental Health Disorder Statistics. (2023, February 1). Johns Hopkins Medicine. <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics#:~:text=An%20estimated%2026%25%20of%20Americans,substance%20use%20and%20anxiety%20disorders.>
2. Geuijen PM, van den Broek SJM, Dijkstra BAG, Kuppens JM, de Haan HA, de Jong CAJ, Schene AH, Atsma F, Schellekens AFA. Success Rates of Monitoring for Athletic trainers with a Substance Use Disorder: A Meta-Analysis. *J Clin Med.* 2021 Jan 13;10(2):264. doi: 10.3390/jcm10020264. PMID: 33450803; PMCID: PMC7828295.
3. Oglesby LW, Gallucci AR, Wynveen CJ. Athletic Trainer Burnout: A Systematic Review of the Literature. *J Athl Train.* 2020 Apr;55(4): 416-430. doi: 10.4085/1062-6050-43-19. Epub 2020 Mar 20. PMID: 32196380; PMCID: PMC7164565.
4. Savage, S. (n.d.). Home. <https://www.fsphp.org/>
5. Savage, S. (n.d.-b). State programs. <https://www.fsphp.org/state-programs>

Q&A, continued from page 06

By expressing one's opinion on a subject as an "expert" in the field of athletic training, one is demonstrating representation of the profession. If you are engaging in an attack on NATA (rather than a criticism) and are a member, regardless of which account you use, you are likely in violation of the COE Principles 4, 4.1 and 4.5.

Q. If an AT was aware of a possible ethics violation involving social media, does the NATA Code of Ethics require that AT to report it?

Absolutely, it's the responsibility of every NATA member to report any infringement of the COE. By not reporting, they are possibly violating the COE Principles 2.2 and 2.3.

Q. If an athlete was rehabilitating their knee and member of the media requested permission to run a photo of that rehabilitation, does an AT need to get permission from the athlete?

Definitely! Ensuring the confidentiality of patients is of utmost importance. This is comparable to what their state practice act covers. If they fail to get permission, then they're possibly violating COE Principles 1, 1.2, 1.3, 2.1 and 2.2.

Q. Is there someone an AT should check with if they have a concern about a social media post they want to make?

NATA doesn't have certain individuals who can review the intended post. Nevertheless, before proceeding with the intended post, one must consult the COE to ascertain whether it infringes

continued on page 08

upon said codes and professional values. This is also relevant to an individual's morals and preferred manner of being addressed and talked to. Should their post be directed at them, would they approve or find it acceptable? A person can guarantee that they aren't in violation by applying their professional standards, morals and ethics. If they have any inquiries or require clarification regarding the COE, they may contact COPE at cope@nata.org.

One final point, COPE can only adjudicate members of NATA. I often see complaints on social media, "Why isn't the NATA doing something about this individual?" We may have tried, but if they aren't NATA members, there is nothing we can do. \$

COPE COLUMN

The Ethical Tightrope: Weaving Personal Values, Professional Codes and Patient Well-Being in Athletic Training

PAUL G. RUPP, MS, LAT, ATC, AND SUZANNE M. KONZ, PhD, LAT, ATC, NATA COMMITTEE ON PROFESSIONAL ETHICS

The practice of athletic training requires many professional responsibilities. Along with the profession's hard skills, athletic trainers must be proficient in many soft skills, such as communication, professionalism and respect for professional competence. One soft skill vital for protecting our patients and profession is practicing ethically.

In the high-pressure arena of athletic training, where split-second decisions impact careers and health, ethical practice isn't a mere box to tick. It is a tightrope walk, navigated not just by codes and standards but by the invisible thread of personal values that guide each athletic trainer's compass. Ethical athletic training is a seamless tapestry woven from the threads of personal values, professional codes such as the NATA Code of Ethics (including the Athletic Training Professional Values), the BOC Standards of Professional Practice and state practice acts. Only by aligning these strands can athletic trainers uphold the highest ethical standards and ensure the well-being of their athletes and patients.

A Guiding Framework

At the core of this tapestry lies the bedrock of personal values. Accountability, integrity, competence, compassion and respect aren't mere buzzwords; they're the driving forces behind ethical decision-making, which is why their addition to the NATA Code of Ethics is noteworthy. Imagine an athlete pressures an athletic trainer to clear them for play despite lingering injury concerns. An athletic trainer guided by personal integrity and patient safety values will prioritize the athlete's long-term health over immediate gratification, even if it means facing uncomfortable conversations. An AT's personal values act as internal filters, constantly evaluating professional decisions against a personal ethical framework.

However, personal and professional values, while essential, require a guiding framework.

Here's where professional codes like the NATA Code of Ethics step in. These principles provide a clear roadmap for ethical conduct, outlining expectations for patient care, confidentiality, professional relationships and conflict resolution. They serve as an external compass, ensuring consistency and upholding the profession's standards. For instance, the NATA Code of Ethics emphasizes informed consent, requiring athletic trainers to communicate the risks and benefits of treatments to patients. This communication ensures trust and respect for the patient's autonomy, aligning with the personal value of respect.

The BOC Standards of Professional Practice adds another layer to the tapestry, focusing on competency and continuous improvement. These standards provide athletic trainers with a checklist of skills and knowledge essential for safe and effective care. Athletic trainers demonstrate a commitment to providing the highest quality care possible by maintaining and honing these skills. Additionally, standards such as maintaining accurate records and reporting potential misconduct align with the NATA Code of Ethics' mandate for professional responsibility and integrity, creating a synergistic bond between personal and professional values.

Finally, state practice acts add a layer of legal specificity. These acts define the athletic trainer's scope of practice and legal boundaries within each state. They act as guardrails, ensuring that ethical practice aligns with legal requirements. For example, state acts often mandate reporting suspected child abuse, aligning with the personal value of compassion and the NATA Code of Ethics requirement to protect vulnerable populations. This interdependency between personal, professional and legal frameworks ensures that ethical practice adapts to local contexts, further strengthening the ethical tapestry.

So, it's important to foster a culture of ethical practice. Promoting ethical behavior and supporting each other in doing so is vital. Athletic trainers who demonstrate an unwavering commitment

to ethical conduct in all situations, not just difficult interactions, are excellent examples to follow. It's the athletic trainer's responsibility to educate coworkers and students about ethical practice. ATs should hold themselves and others accountable for their words and actions. Addressing any actions that appear to cross the line and intervening early can prevent major issues. ATs should create a safe space to have difficult conversations. This action will support ethical practice and help patients with mental health issues. They'll see what kind of environment the AT has created and will behave accordingly.

Use Your Resources

However, weaving this tapestry isn't without its challenges. Conflicts between personal values and professional expectations can arise. Ethical practice must be prioritized

and needs to be practiced and taught. Overall, the patient's well-being must be a priority. Ethical codes, state practice acts and oversight boards expect the reporting of unethical behavior. So, ATs are expected to report unethical behavior to NATA, the BOC and the state licensure body. By fulfilling this ethical expectation, we protect the profession and the community the athletic trainer serves. Report the potential violation and let the ethical boards conduct the investigation.

Ethical ambiguity can sometimes blur the lines between right and wrong. Interpreting standards and applying them to specific scenarios can be challenging in complex situations. Here, open communication and peer support become vital. Discussing dilemmas with colleagues and seeking mentorship from experienced athletic trainers can help clarify interpretations and ensure alignment with

personal values and professional codes. When navigating ethical decisions, don't be afraid to ask for help. Mentors are a great resource for everything, not just treatment tips. There are countless resources at the AT's disposal.

In conclusion, ethical practice in athletic training is not a solitary act dictated by external codes. It's a dynamic dance between personal values, professional frameworks and legal boundaries. By weaving these threads together, athletic trainers create a tapestry of ethical conduct that ensures patient well-being, builds trust and upholds the profession's integrity. By continuously reflecting on personal and professional values, navigating the professional compass and adhering to legal requirements, athletic trainers can confidently walk the ethical tightrope, knowing they aren't just guardians of athletic performance but also champions of their athletes' health and well-being. §

CASE SUMMARY

California Appeals Court Rules in Negligence Case

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 California appeals court has affirmed a lower court ruling to dismiss a lawsuit against a football coach for negligence after a high school athlete sustained a debilitating head injury during a football game.

During the game, the athlete suffered a dislocated finger, which was treated by the athletic trainer and team physician. Before resuming play, the injured player allegedly reported symptoms consistent with a head injury to other players, claiming he suffered a collision to his head, had blacked out and had a headache. However, he never reported these symptoms to the athletic trainer, team physician or coaches.

The coach asked the team physician whether the player was "done for the day" and was advised that they could tape the finger and he would be fine and ready to go. Thereafter, the coach asked the player if he was ready to go; the player responded that his finger was fine, but that "I'm not ready to go in now." The coach responded, "OK, when you are ready to

go in, come back and let me know." He soon resumed play and collapsed during a time-out, having suffered a right subdural hematoma.

The player then sued the coach and school district, presenting an affidavit from a neurologist that the player's brain injury was caused by second impact syndrome. After the trial court granted the defendants' summary judgment motion, the player appealed.

On appeal, the player claimed that "he suffered a head injury in the incident in which he sustained the dislocated finger, and that the defendants negligently failed to inquire further into his condition at that time." His expert witness asserted that the player's brain injury "was caused primarily by second impact syndrome/malignant brain edema, and that second impact syndrome would not have occurred had [the athlete] not been permitted to return to the field after his first head injury during the football game."

The court ruled that the player exhibited no outward signs of a head injury and didn't inform the coach of his head injury prior to being reinserted into the game. The trial and appellate courts thus both concluded that the athlete was subject to the assumption of risk doctrine.

In its analysis, the appeals court noted that the assumption of risk doctrine precludes liability for injuries arising from those risks deemed inherent in a sport.

The court noted that the question of whether a coach has a duty to restrict participation



of an injured player to avoid aggravating an injury primarily concerns the foreseeability of further injury.

While foreseeability is usually a question of fact, it may be decided as a question of law when the facts are undisputed and there is no room for a reasonable difference of opinion, the court noted. Here, the court concluded, the facts are undisputed and none of these facts could possibly have made the player's second injury foreseeable to the coaching staff.

The court further explained, "Without evidence that [the player] reported his first head injury to anyone on the medical or coaching staff, the coaches were not on notice of [the player] suffering anything beyond a dislocated finger that was easily treated on the sidelines." §

Supreme Court's NIL Decision Leads to Meaningful Consequences, Uncertainty

In July 2021, the U.S. Supreme Court unanimously ruled that the NCAA couldn't prohibit student athletes from profiting off education-related payments.

The ruling in "NCAA v. Alston," commonly referred to as the NIL (name, image and likeness) decision, has had an enormous impact on college athletics, paving the way for lucrative NIL-based arrangements for top Division I football and basketball stars, Division III volleyball players to earn money in side hustles, the hiring of NIL advisors and the formation of booster-backed "collectives" to provide more NIL opportunities for athletes.

But it has also had a head-spinning effect on coaches, athletic directors, players, boosters, parents, university presidents and, because it involves athletics, athletic trainers.

NIL Considerations for ATs

While the NATA Intercollegiate Council for Sports Medicine has discussed NIL from patient care and mental health perspectives, this Law 101 feature will break down the legal aspect.

Consider these scenarios:

What if an AT is working with an athlete and their images appear on a billboard promoting a local restaurant? What if a local booster wants to sign a baseball player to a NIL contract to promote her husband's chiropractic business and asks an AT to confirm that the player is being treated for an injured back?

Whether you're involved directly or indirectly in NIL, it's important to know what's really happening with NIL. As the term implies, NIL comes into play with an athlete's name, image and likeness is used to market or promote a product or business. This includes autograph signings, product endorsements, social media posts and more.

The Supreme Court specifically upheld a lower court's ruling that NCAA restrictions on "education-related benefits" for college athletes violated antitrust laws. It's important to point out that the opinion rendered by Justice Neil Gorsuch was narrow in scope – dealing only with education-related benefits and not the larger issue of pay-for-play or other big-picture issues

with college athletes. After the decision, the NCAA has insisted that it still had the authority to create limits on benefits unrelated to education.

However, the NCAA did officially suspend the organization's rules prohibiting athletes from selling the rights to their names, images and likenesses. The new rules, which continue to be in flux, combined with new state laws that are also evolving, clearly represent a major shift in the NCAA's definition of "amateur student athlete."

Wait, There's More

The NCAA has stated that the current rules are temporary – until Congress can create national laws allowing for clearer regulations for future college athlete NIL deals. Whether that actually will come to pass is problematic, but for now, that means that all athletes – no matter what division they play in or what sports they compete in – have an opportunity to profit from NIL, as long they don't run afoul of state laws, which can be difficult to navigate.

However, college coaches can't offer money as an incentive for high school athletes to come play at their school, nor can athletes receive compensation directly from their university based upon their athletic achievements. Because the NCAA still intends to maintain its amateur sports status, paying athletes for their play on the field isn't possible. However, NIL is the workaround for athletes to get paid without technically being considered professional athletes who make a living playing their sport.

Some have described the scene around NIL as the Wild West of the 21st century. In this milieu, you see big-time, national athletes promoting name brands and popular, local athletes create Instagram brands that support local car dealerships. While one athlete can make more money signing autographs, another may be able to generate profit from giving music lessons.

It's also hard to make an argument whether one school is more likely to see athletes make a profit off their NIL than another. Guess who were the very first athletes to take advantage of the NIL decision? No, it wasn't the two quarterbacks in the College Football Playoff National Championship. It was Hanna and Haley Cavin-der, twin sisters who play for Fresno State's



basketball team and share millions of followers on social media. The twins worked with Icone Source and Boost Mobile to strike a deal within hours of the NCAA instating the new NIL rules.

Whether an athlete chooses to post certain products on social media, sign autographs, teach camps or promote a local pizzeria is completely up to them. The current NIL marketplace is designed to reward athletes who are NIL creators.

It's also the Wild West because where there's uncertainty, there's litigation.

Exhibit A

A judge in California has ruled that athletes could form a class action lawsuit to sue for more than \$1.3 billion in damages over the commercial use of their name, image and likeness.

The lawsuit seeks to certify a class that includes full-athletic-scholarship athletes in football, men's basketball or women's basketball within certain conferences of the NCAA's Division I.

Meanwhile, the NCAA announced recently that an assistant coach in Florida committed several major recruiting violations when he facilitated contact between a transfer prospect and a booster who offered the player a NIL contract to play for the football team. The NCAA said the assistant provided "false or misleading information" to investigators about his involvement in the situation. This was the largest punishment meted out in a NIL investigation since the Supreme Court's decision, according to *The Washington Post*.

The bottom line: Until there is federal NIL legislation, expect that the wild concoction of NCAA restrictions, state statutes, parental, booster, university and community involvement in an ever-changing regulatory and legal backdrop will continue for the foreseeable future. \$