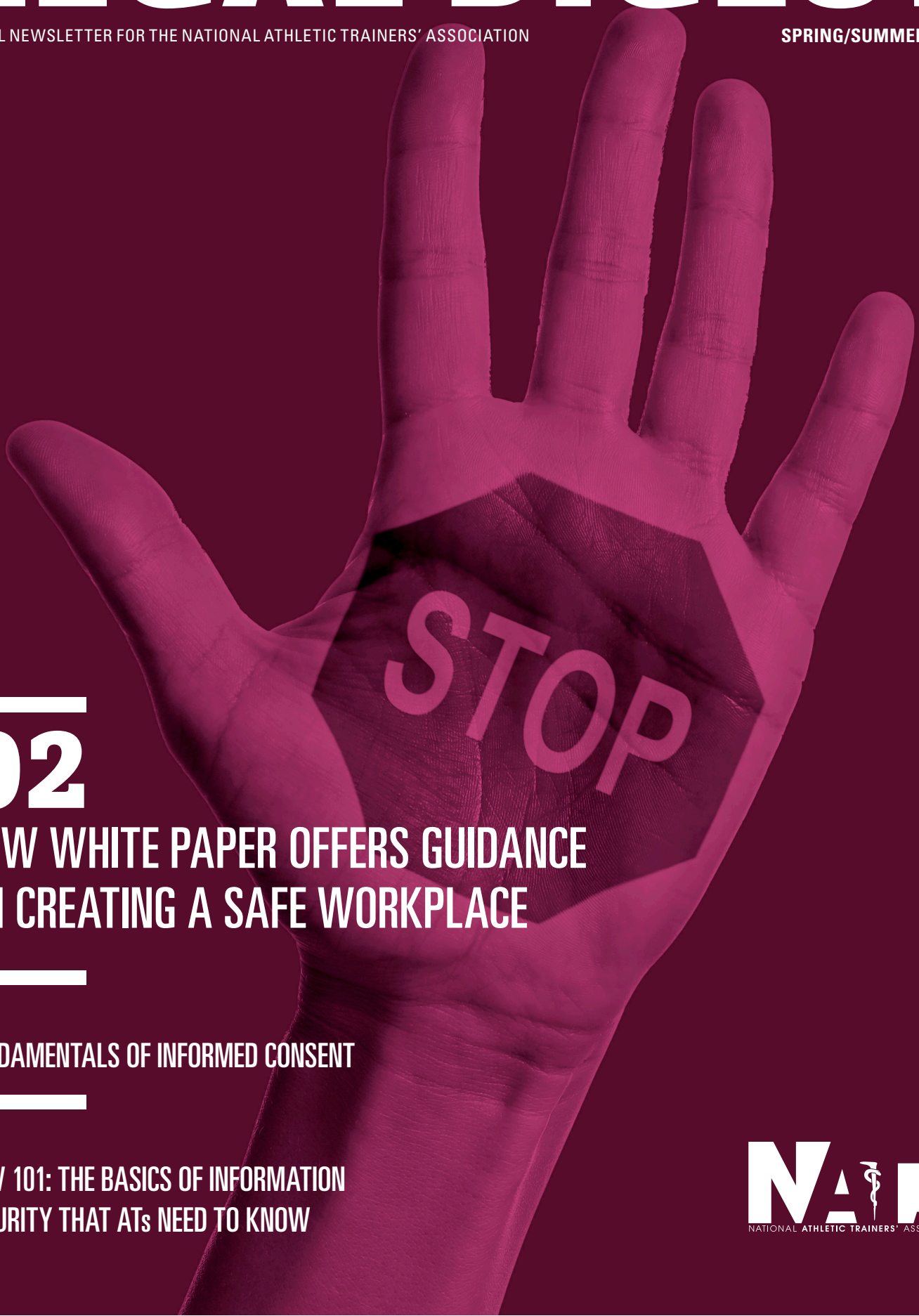
SPORTS MEDICINE

LEGAL DIGEST

LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

SPRING/SUMMER 2025



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

New White Paper Offers Guidance on Creating a Safe Workplace

Work group cochairs provide insight and next steps now that new document has been released

BY BETH SITZLER

In January, NATA released Athletic Training: Risk Management Strategies for Avoiding and Responding to Sexual Misconduct, a white paper created to address vulnerabilities within the athletic training profession.

The idea for the white paper was spearheaded by Jamie Mansell, PhD, LAT, ATC, with Temple University, and Dani Moffit, PhD, LAT, ATC, with Idaho State University, who presented the 2021 NATA District Lecture series, "Sexual Harassment: Protect Yourself, Protect Your Patients."

"After the presentation, we'd have people come up to us and say, 'Here's my story,'" Mansell said. "Dani and I [also] had some instances with students where they would bring stories back to us as the clinical coordinator and program director that we said, 'That's actually not acceptable behavior.' Then, we started to realize that this was something that a lot of our students were experiencing. It also led us to, 'Oh, wow, look what happened when I was a student, and now that I'm an adult, I'm realizing that this wasn't OK.'

"So, from personal experience and also the experiences that were coming to us from other people, we realized that it was an issue and it was an issue that wasn't being talked about a whole lot."

Moffit said the duo went on to create a "manifesto" that outlined things within the profession they felt needed to be examined, such as sexual misconduct, which they shared with NATA Past President Kathy Dieringer, EdD, LAT, ATC, in 2022.

"There was almost no discussion – it was, 'Yes, we need to do this,'" Moffit said of the response from NATA leadership to create a white paper related to sexual misconduct. "We pointed out that there were several other professions that had something like this, and because Jamie and I have done research on sexual misconduct for so many years, we just thought that this would be a natural next step."

After receiving the green light to create the white paper, Mansell and Moffit reached out to ATs with needed experience and knowledge to fill out the writing work group, such as Benito Velasquez, DA, LAT, ATC, who published the first article on the topic, "Sexual Harassment: A Concern for the Athletic Trainer," published in the *Journal of Athletic Training* in 1998. Other work group members included:

- David Cohen, ATC, Esq., a dual-credentialed AT-lawyer and former member of the NATA Professional Responsibility in Athletic Training Committee
- Ashley Crossway, DAT, ATC, a member of the NATA LGBTQ+ Advisory Committee who has researched and published articles in *JAT* related to the LGBTQIA+ community
- Tammi Gaw, MS, ATC, Esq., a dual-credentialed AT-lawyer
- Timothy Neal, LLMSW, ATC, CCISM, a dual-credentialed AT-social worker and NATA's liaison to Mental Health America

With the work group formed, members set out to create a robust resource for athletic trainers that examined sexual misconduct from not only the patient perspective but also the athletic training student and athletic trainer perspectives, ensuring everyone in the sports medicine environment feels safe.

"We wanted to let people know that they have autonomy over their body and their environment," Mansell said. "If they don't feel safe at work or they don't feel safe with a colleague, a patient or a preceptor, they should be able to right that wrong and say that it's inappropriate and have steps taken to make sure that they are safe."

The white paper provides insight into sexual misconduct terminology, power dynamics in patient-provider interactions, the impact of trauma and trauma-informed care, legal and ethical considerations and state laws, among other topics. The white paper also includes a recommendations section for the Athletic Training Strategic Alliance as well as individual ATs.

Now that the white paper has been released and adopted as policy by the NATA Board of Directors, athletic trainers are encouraged to read the resource and examine what's happening within their workplace.

"Share it with your organization," said Moffit, adding that all key stakeholders should review the white paper.

"If you have policies that are currently in place – or practices that aren't policies – that's something that you need to review with the legal team where you work," Mansell said.

"Coaches, athletic administration, hospital administrators, the people who are forming policies, the people who are enforcing policies, the people who have the ability to decrease power dynamics in the work setting – they need to hear it, too. It can't just be athletic trainers because we know that there are so many other people who are in our workplaces, and they're both part of the problem and part of the solution."

It's also important to remember that with the publication of the white paper, new standards for care have been set. Meaning that if ever sued, an AT's actions will be compared to best practices outlined in the white paper.

"This is policy, this is best practices," Moffit said. "You're going to be held to this standard. And any lawyer who sees this, you're not going to have an argument [if you're not following it]."

Ultimately, what the duo hopes ATs takeaway from the white paper is a better understanding

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Want To Learn More?

Jamie Mansell, PhD, LAT, ATC, and Dani Moffit, PhD, LAT, ATC, provide more insight into the Athletic Training: Risk Management Strategies for Avoiding and Responding to Sexual Misconduct white paper in a special episode of "The NATA-Cast." During the podcast, the duo and host Kasee Hildenbrand, PhD, LAT, ATC, explore challenges and practical strategies for creating safer environments in athletic training. Listen to this and all "The NATA-Cast" episodes at **www.nata.org/nata-podcast** or wherever you listen to your podcasts.

Q&A

DEALING WITH MENTAL HEALTH AND SUBSTANCE ABUSE IN ATHLETICS

Timothy Neal, LLMSW, ATC, CCISM

At one point not so long ago, mental health and substance abuse were taboo topics. Today, business professionals realize that mental health and substance abuse matter and need to be discussed honestly – with privacy protections – for both supervisors and rank-and-file employees to succeed.

For athletic trainers, mental health and substance abuse issues are important, both from the athlete's perspective and their own. To find out more about the issues and responsibilities involved in this space, *Sports Medicine Legal Digest* interviewed NATA Mental Health America liaison Timothy Neal, LLMSW, ATC, CCISM, who is dual-credentialed as an athletic trainer and social worker.

Q. If an AT knows that a patient is having a mental health crisis, what is their legal and ethical responsibility?

The AT should know their state laws and organizational protocols on responding to a mental health crisis in an athlete. In the collegiate setting, working with the risk manager, legal counsel and athletics administration in developing a protocol for identifying, referral and communication with others, including the family, during an athlete's mental health crisis must be vetted and in line with state laws.

Utilizing the 2013 NATA Inter-Association Consensus Statement for Developing a Plan to Recognize and Refer Student Athletes With Psychological Concerns at the Collegiate Level (**www.nata.org/news-publications/pressroom/statements/nata-consensus-statements**) and the NCAA Mental Health Best

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Practices: Understanding and Supporting Student Athlete Mental Health document (**www.ncaa.org/sports/2024/2/19/mental-health-best-practices-understanding-and-supporting-student-athlete-mental-health-second-edition-question-and-answers.aspx**) are excellent starting places to develop a plan that includes managing a mental health crisis. A companion NATA consensus statement for secondary school athletes can be used to help construct a mental health crisis protocol for student athletes who are minors.

Ethically, in the NATA Code of Ethics, Principle 1.2 states that "a member's duty to the patient is the first concern." The AT should make the patient the primacy of their care be it physical injury or mental health concern.

The AT should know the emergent mental health crisis protocol and keep it with them to follow the steps outlined in the protocol to not only provide prudent care for the athlete, but also to protect the public, and to be in alignment legally and ethically in the event of this situation. I have been in these situations several times and having a protocol in front of me to follow really helped the athlete of concern and follow institutional policy on a student emergent mental health crisis.

Q. If an AT knows that an athlete has a problem with substance abuse, what is their legal and ethical responsibility?

If an AT suspects that an athlete has an issue with substance abuse, the AT should follow the protocol set up within their organization. Those protocols usually have been vetted with the legal counsel of that organization relative to state law. Also, if the athlete with the suspected substance abuse is making threats against themselves or others, the AT, by their practice acts, may be a mandated reporter who needs to report threats to appropriate officials.

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GUIDANCE ON CREATING A SAFE WORKPLACE *continued from page 03*

of their role – and rights – in creating a safe workplace environment for all involved, be it patient, AT or athletic training student.

"There's a comment from Rachael Denhollander, who was the first gymnast to stand up and say, 'This is what Larry Nassar did to me,' that says, 'In many ways, the sexual assault scandal that was 30 years in the making was only a symptom of a much deeper cultural problem: the unwillingness to speak the truth against one's own community.'

"I look at athletic training as a community, and while this cultural problem may not be specifically athletic training, it's a cultural problem for the country, for the nation. And as a community, we need to be willing to speak the truth. We need to be willing to understand that it's our responsibility to follow the NATA Code of Ethics and [Board of Certification for the Athletic Trainer] professional practice. We need to be the ones who speak up when we see it happening, when we hear it happening. Whether it's toward a patient or colleague, no matter who it's coming from, we have to be willing to speak up. That's what I want to see. I want to see us, as a community, fight this cultural issue. We have to be willing to stand up."

Moffit and Mansell said the work group is currently working on splitting the document into shorter articles that they hope to publish in academic and research journals, furthering its reach to a larger audience of stakeholders.

To read the full white paper, visit the Risk and Liability section of the NATA website, **www.nata.org/practice-patient-care/risk-liability**.

CASE SUMMARY

Litigation Against High School Athletic Trainer Ends in Mistrial

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.*

The issue of alleged sexual misconduct on the part of athletic trainers is sometimes difficult to adjudicate because the facts may be in disputes or interpreted differently by the plaintiffs and defendants.

Sometimes, the litigation against an athletic trainer can end in a mistrial, as was the recent case involving an athletic trainer in the secondary school setting in Massachusetts.

In that case, the jury failed to reach a unanimous decision in one of two cases against a former athletic trainer accused of inappropriately touching student athletes while treating them. In order to be convicted of improper sexual conduct in this instance, the jury had to reach a unanimous decision against the athletic trainer.

The failure to secure a unanimous verdict resulted in a hung jury, which in turn means that a new trial will be scheduled for the athletic trainer. The athletic trainer was facing a single count of indecent assault and battery on a person aged 14 years or older. The athletic trainer also was accused in a separate legal proceeding involving three more counts of the same charge, based on allegations from two other accusers.

Following the mistrial, the court ordered future proceedings be scheduled to determine future trial dates for both cases.

The athletic trainer's attorney also issued a public statement that asserted that the allegations against their client are baseless.

"We appreciate the jury's time and careful consideration in this case," the attorney said. "Reaching a unanimous verdict is a challenge, but [my client] is innocent, and we will continue to fight to clear [their] name. As the case remains pending, we have no further comment at this time."

The jury consisted of seven women and five men and took several days to deliberate until it eventually sent a note to the judge stating they

had "extensive conversations after examining the evidence and cannot reach a unanimous decision." The judge read a statement to the jurors, urging them to continue deliberations.

After approximately two more hours, the jurors again passed a note stating they were still at an impasse. When the jury would typically be dismissed for the day, jurors sent a final note indicating that reaching a verdict was simply not possible. The judge subsequently dismissed them from service.

The athletic trainer began their tenure at the high school about 20 years ago. They were instructed to leave the school after the allegations surfaced.

The school superintendent disclosed that the district had also terminated its contract with the athletic training company operated by the accused athletic trainer.

It's important to note that a hung jury doesn't mean that the defendant is out of the woods since they may face another trial on the same grounds.

PRAT COLUMN

Fundamentals of Informed Consent

BY KATIE WALSH FLANAGAN, EdD, LAT, ATC, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE; RANDY COHEN, DPT, PT, ATC; AND DENISE MASSEY

Evidence-based medicine and patient-centered care are both at the forefront of health care delivery. One focuses on utilizing the best evidence available to improve outcomes, and the other places emphasis on patients' autonomy surrounding their medical care.

In the medical field, autonomy refers to the patients' right to make decisions regarding their medical care.[1] Patient-centered care requires open communication, shared decision-making and doing what is best for patients regardless of external pressures.[2] Documentation of patient-centered care and clear communication between the health care provider and patient is a critical aspect of the fundamentals of informed consent.

At the foundation of patient-centered care is informed consent. The purpose of informed consent is to educate patients before procedures, therapeutic actions or return to play and allow them to make the best informed decision for themselves. Patients must be aware of potential risks, benefits, alternatives and possible consequences of following a recommendation. Patient-centered care should extend throughout the timeline from evaluation through return to participation. Specific to sports medicine, patients should be made aware of potential risks and be allowed to decide when they are also ready to return to activity following an injury or illness.

This column addresses the different types of consent germane to athletic training and the basic tenets of obtaining consent. Several types of consent address providing information to a patient to allow them to make informed decisions about treatment and activity. The most common types of consent are express, tacit and implied.[3] Other types of consent related to athletic training are consent of a minor and refusal of consent.

Express consent is also often referred to as explicit or direct consent. This is when permission to treat is given only after the individual is made aware of all possible consequences (good and bad) for a given procedure or return to activity, and the patient agrees to the intervention or return to participation after acknowledging the risks and benefits. Express consent can be obtained verbally, if the situation dictates it, or in written format.[3] In written consent, a person reads and then signs a document stating agreement to the terms of the procedure and understanding of the possible effects[2] and outcomes of the treatment. Typically, written consent also offers the patient opportunity to ask questions prior to signing.

As with express consent, written consent must be communicated in a language and terms the patient can understand.[3] Communication is an important concept to informed consent. However, in the case of an adolescent or concussed patient, the clinician may inform them but the patient also must understand or comprehend what is being told.[4] For the possible concussed patient, the AT should follow the standard of removal and not allow the patient to return to participation until medically cleared, as a patient should never be allowed to consent to return to activity with a concussion or suspected concussion.[5, 6] All consent, verbal, written and otherwise, must be documented to include questions asked by the patient and answers provided by the AT.

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Ethically, Principle 1.2 again states that "a member's duty to the patient is the first concern." The AT should make the patient the primacy of their care be it physical injury or mental health concern such as a substance abuse issue. To care for the athlete holistically, ethical considerations should always be in the forefront. Ethically, the AT should refer the athlete for an evaluation and care for their substance abuse issues. If the athlete refuses to go for an evaluation, the AT should consult with the physician and/or review their organizational protocol to enforce a prudent act of care for the athlete who may be in denial of their substance abuse issues.

Q. How are these responsibilities different if the person is a minor?

The AT must factor in and comply with their respective state laws governing working with, caring for, referring and communicating with parents of minor children participating in sports. Knowing their respective secondary school regulations is vital, and for the AT working in the outreach area, their hospital or organization they work for must have those regulations understood during the on-boarding process of a new hire and written acknowledgement by the AT during the hiring process, if not annually.

Identifying a minor student athlete with a potential substance abuse issue isn't unusual; however, approaching and referring that minor is what the AT and their organization should understand and adhere to within their respective state laws and practice acts. The AT should also know if they're mandated reporters in the event of suspected or confirmed child abuse, and knowing how to report that is essential. A minor with a substance abuse disorder may be using that maladaptive way to cope with their abuse, so it isn't uncommon for these two seemingly unrelated issues to be related as cause and effect. Again, seek legal counsel when in doubt.

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Q. If an AT knows a coworker has an issue with substance abuse, what is their legal and ethical responsibility?

The AT should act out of safety and empathy for their fellow AT who may have an issue with substance abuse. The AT should approach their fellow AT with a suspected substance abuse issue in an empathetic way to suggest seeking help for their dependency.

Once the actions of the AT with the suspected substance abuse places a patient in an unsafe position, or the ATs actions outside of work indicate the disorder places others at risk (i.e., assault, driving while intoxicated or while high on drugs), then the AT with concerns should report the AT with a suspected substance abuse issue to the state licensing board and, if available, the state health profession recovery committee. The AT with a concern for the AT with a suspected substance abuse issue has an ethical duty based on the "societal contract" with the public and the athletic training profession to protect the safety of the public and report that AT with a potential substance abuse issue.

Ethically, the NATA Code of Ethics Principle 2.6 addresses substance abuse by the AT, stating, "Members should refrain from substance and alcohol abuse."

Q. What legal protections does an AT have if they're the one going through a mental health crisis?

The AT going through a mental health crisis has legal protections of confidentiality of information of their incident unless they have expressed harm toward themselves or others, then that confidentiality privilege is waived. There is also due process involved in obtaining both medical and mental health information in the event of an investigation where the mental health crisis resulted in authorities becoming involved for safety

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Tacit consent is inferred from the circumstances and referred to a patient who isn't objecting to treatment. When the patient has the opportunity to speak up or object but allows the treatment to continue, that silence is termed tacit consent.[3] In athletic training, this type of consent should be scrutinized. Athletes and others in a similar hierarchical workforce may be silent not because they agree to the treatment, but rather due to fear of repercussions. Tacit consent shouldn't be assumed with any treatment, especially any in which a clinician has physical contact with a patient and makes return-to-participation decisions as athletes may not feel they have the right to express concern or have the opportunity to question that decision.

Implied consent is likely used most often in athletic training.[5] This involves circumstances that would lead the AT to understand consent is obtained, even though no specific words have been spoken. For example, during an on-field evaluation for a fracture, the AT usually doesn't ask for permission to touch the patient and doesn't usually explain what they're doing, such as palpating for a suspected fracture. It's understood that the AT will perform all necessary steps involved with the evaluation of this injury to help the patient.

Of critical significance, implied consent shouldn't be used for treatment that requires physical contact and return-to-participation decisions.[7] The medical provider should seek express consent as the pressure of not letting down teammates, coaches or family, or the undue influence of making this decision, especially while on a sideline during competition, is significant.[8]

People who can create an undue influence that may impact return-to-play decisions include parents, coaches, teammates, media and even health care providers.[9] Anyone who could benefit from the athlete's return to activity, by increasing the chance for a win, more points scored, larger nontertiary for the institution (e.g., school, club, college, medical practice, etc.) or family and larger returns on betting all contribute to the stress of an athlete feeling pressured to return to activity before they are fully ready.[8] An informed health care provider will take these external challenges into consideration when seeking a fully informed consent from their patient.[10]

According to NATA, the secondary school setting makes up one of the largest practice settings of AT members. With many high school sports, the host AT provides medical care for both home and visiting athletes, nearly all of whom are minors. Two other aspects of consent that are apropos when working with minors include obtaining consent for the treatment of a minor and refusal of consent.[11] In the former, treatment of a minor is allowed in the absence of a legal guardian on-site when there are emergent circumstances.[12] In the latter, refusal occurs when the parental or legal guardian refuses to allow treatment of a minor under their jurisdiction. The law is clear in most circumstances that minors can't give consent of their own volition, yet aside from treatment for emergency situations, consent for these minors must be obtained for injury, evaluation, treatments and return-to-participation decisions.[5, 11]

Consent isn't absent of the minor patient's contribution, as with patient-centered care, the patient is to have a say on their wish (for evaluation, treatment, return to play). This often gets blurred in athletics, but that discussion is beyond the scope of this column. Informed consent for a minor to receive medical care is state dependent and individual state law should be followed.

The definitions of parent and legal guardian are critical for the discussion of consent relating to minors. A parent is typically understood to be a minor's biological or adopted responsibility. A legal guardian is appointed by the court and has the authority and responsibility to make decisions for the health and well-being of a minor or incapacitated person; and can be different from one or both of the biological parents.

In both cases, the decision rights can extend to education, religious upbringing and participation in extracurricular activities, among other areas. In most cases, parents are the legal guardian, but there are times when one or both the biological parent isn't the legal guardian. In some cases of divorce, only one biological parent has the legal right to consent. It's incumbent on the organization to know and confirm the person(s) who has the right to speak for a minor or incapacitated person and to share that information with medical and educational staff.

A discussion on informed consent isn't complete without mentioning the revocation of consent. In this circumstance, a person has freely allowed treatment, therapy or another action after consenting to it, then revokes their acquiescence before, during or after such treatment or return to activity has started.[13, 14] For example, an athlete may give informed consent to the AT to treat a tight iliotibial band via deep tissue therapy, then asks for the treatment to be stopped for whatever reason (too painful, uncomfortable, uncertain what the treatment would feel like, etc.). In this situation, the AT must immediately stop the therapy and document the reversal of consent to treat by this

method (i.e., deep tissue work). One method of assuring consent is periodically checking with the patient to ensure they're comfortable with continuation of the treatment.

In addition to the types of informed consent, there are also four distinct tenets of obtaining informed consent: capacity, disclosure, competency and voluntariness. Each aspect must be addressed in order for consent to be realized.

First, the patient must have the capacity to make an informed decision. This means the patient has the mental capacity (e.g., language, understanding) and is free of internal (e.g., intellectual and mental ability, drugs, alcohol) and external pressures (e.g., parents, coaches, agents) to make an informed decision about treatment or activity. The second condition is the disclosure of any relevant information related to the treatment. Disclosure includes, but is not limited to, information such as side effects, benefits, risks and potential consequences of either the intervention or return to activity. The third condition is competency, which is assurance that consent was provided. The final tenet is that informed consent must be genuinely voluntary and without external influences that may persuade or threaten the patient.

References

1. Kerr EA, Hayward RA. Patient-Centered Performance Management: Enhancing Value for Patients and Health Care Systems. JAMA 2013;310(2):137-38. doi: 10.1001/jama.2013.6828
2. Chritsman T. Patient-Centred Care. National Athletic Trainers' Association.2016 [Available from: https://www.nata.org/nata-now/articles/2016/11/patient-centered-care accessed Mar 26, 2025.
3. Gardner BA, editor. Black's Law Dictionary. 12th ed. Toronto, Canada: Thompson Reuters, 2024.
4. Bunch WH, Dvonch VM. Informed consent in sports medicine. Clin Sports Med 2004;23(2):183-v. doi: 10.1016/j.csm.2004.01.004
5. Osborne B. Principles of Liability for Athletic Trainers: Managing Sport-Related Concussion. . J Athl Train 2001;36(3):316-21.
6. Pai SN, Jeyaraman M, Maffulli N, et al. Evidence-based informed consent form for total knee arthroplasty. J Orthop Surg Res 2024;19(1):133. doi: 10.1186/s13018-023-03647-2
7. Murtha TD, Faustino EVS. Is "Informed Consent" Truly Informed? Pediatr Crit Care Med 2020;21(6):589-90. doi: 10.1097/PCC.0000000000002242
8. Bester J, Cole CM, Kodish E. The Limits of Informed Consent for an Overwhelmed Patient: Clinicians' Role in Protecting Patients and Preventing Overwhelm. . AMA J Ethics 2016;18(9):869-86. doi: 10.1001/journalofethics.2016.18.9.peer2-1609
9. Hanson SS. 'He didn't want to let his team down': the challenge of dual loyalty for team physicians. J Phil Sport 2018;45(3):215-27. doi: 10.1080/00948705.2018.1486199
10. Best TM, Brolinson PG. Return to play: the sideline dilemma. Clin J Sport Med 2005;15(6):403-03. doi: 10.1097/01.jsm.0000187076.74606.75
11. National Athletic Trainers Association. Appropriate Contact with Minors National Athletic Trainers' Association.2019 [updated 2019. Available from: https://www.nata.org/sites/default/files/appropriate_contact_minors_final.pdf accessed Mar 28, 2025.
12. Hessert B. The protection of minor athletes in sports investigation proceedings. The international sports law journal 2021;21(1-2):62-73. doi: 10.1007/s40318-020-00177-5
13. Fernandez Lynch H, Joffe S, Feldman EA. Informed Consent and the Role of the Treating Physician. N Engl J Med 2018;378(25):2433-38. doi: 10.1056/NEJMhle1800071
14. Shah P, Thornton I, Kopitnik L, et al. Informed Consent. In: National Library of Medicine, ed. StatPearls. Treasure Island, FL: StatPearls Publishing 2024.

LAW 101

Information Security: The Basics ATs Need to Know

It's critical that all athletic trainers know the legal implications of dealing with protected health information (PHI), especially when it comes to issues involving information technology (IT) and the rapidly growing amount of medical data ATs are managing.

Privacy concerns about heightened awareness and increased sensitivity to substance abuse and mental health issues have prioritized information security. To take a deeper dive into this issue, *Sports Medicine Legal Digest* sought input from Kevin Robell, MA, ATC, chair of the NATA COPA Analytics and Outcomes Panel, and panel members Kassi Hardee, MEd, LAT, ATC, and Adam Annaccone, EdD, LAT, ATC.

When it comes to dealing with a patient's medical information, Annaccone said the most important thing athletic trainers need to know is that they must obtain proper authorization

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reasons. HIPAA guidelines regarding mental health care also protect privacy and security of that information.

Q. What legal protections does an AT have if they're dealing with substance abuse?

The AT has confidential legal protections if being treated for a substance abuse issue, unless there has been a legal procedure requiring others, such as a state board, to know. If the AT has been convicted of a misdemeanor or felony related to a substance abuse issue, then there is little protection for the AT legally since it has already been adjudicated. Any state athletic training board or state health profession recovery committee can also suspend an AT license to practice for public safety purposes if the AT is brought up on charges or self-reports a substance abuse issue because a monitoring agreement has usually been entered for the AT if they wish to continue practicing following a DUI or revealed substance abuse disorder. States are rightfully very protective of public health as it relates to having any health professional performing their duties while under the influence of substances. If the AT is being treated for a substance abuse disorder without patient safety concerns, then the AT is protected legally as any other person being treated for these issues and is free to continue with their practice of athletic training.

Q. What are the privacy concerns an AT needs to bear in mind when dealing with an athlete with a mental health or substance abuse issue?

Unless the athlete has expressed harm to themselves or others, then a right of privacy and confidentiality exists. Also, if an athlete is being treated by a

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physician for a mental health disorder (e.g., disordered eating or prescribing psychotropic medication), then the AT needs to limit discussions with that physician in private in order to protect the confidentiality of the athlete's information.

Discussing an athlete's mental health issues or substance abuse disorder outside the confines of the medical staff and/or mental health professionals is akin to discussing the athlete's physical injuries and treatment without the athlete's written permission to the public. The key element is that the athlete signs off on discussion of their substance abuse issues with the appropriate stakeholders.

Also, organizations may have legal counsel examining state and federal law to develop protocols by which athletic administrators and coaches may learn of a positive drug screen with an athlete for administrative purposes such as any sanctions on participation as part of the university's drug education policy. That has to be worded by legal counsel and the athlete must sign off on this prior to any testing to be fully informed to grant consent to testing and any sanctions in the event they are tested positive for a banned substance. The AT may be a part of the testing and/or referral for counseling part of the drug testing policy, so they need to understand the proper procedures and that these procedures have been approved by general counsel.

Coaches may wish to know about mental health issues with their athletes. In intercollegiate athletics, coaches are usually informed of an athlete's positive drug screen, indicating sometimes, but not always, of a substance abuse issue (some athletes have a positive drug screen because they don't necessarily have a substance abuse disorder but had a momentary lack of discipline trying a banned substance or drinking under age because of peer-pressure).

Coaches are already informed of a physical injury to one of the athletes on the team for playing status purposes because the athlete has already signed consent for that information to be supplied to the coach by the AT. However,

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before disclosing any medical information and should always prioritize confidentiality, only sharing information with individuals who have a legitimate need to know.

Robell said, in certain educational settings, a patient's medical information is governed by the Family Educational Rights and Privacy Act (FERPA) and is considered educational records. Health Insurance Portability and Accountability Act (HIPAA) specifically excludes educational records in its definition of protected health information, he noted. In most cases, if FERPA applies, HIPAA doesn't.

"There are limited instances where they begin to intersect – for example, certain billing scenarios where a school health care provider (i.e., student health center or nurse) may be considered a 'covered entity' under HIPAA," he said, adding that it's always best to consult with your administration to understand these limited instances.

Hardee said ATs should understand new technology and make sure their medical records systems, communication/messaging systems and other storage/transmission processes are HIPAA-compliant and include technical safeguards, encryption, business associate agreements and patient consent of electronic PHI sharing risks.

HIPAA Concerns

The primary HIPAA concern that athletic trainers need to know about, according to the panel members, entails the authorization process.

"Our patients have designated us as an 'ambassador' of their data," Robell said. "As such, it is our primary responsibility to ensure medical information is protected and secure at all times. It is common for ATs to find themselves in communication, both verbal and written, with individuals who do not share this responsibility. As an 'ambassador,' whether governed by FERPA or HIPAA, it's essential that ATs communicate 'minimum necessary' information to satisfy a particular medical purpose or task; and that communication is conducted in secure environments."

Of course, athletic trainers may inadvertently not adhere to HIPAA rules. Hardee said this can occur in several situations, including:

- Non-encrypted text messaging and emailing
- Failure to obtain sufficient consent to communicate PHI (electronically and to other parties, such as coaches and professional agents)
- Accessing electronic medical data with which they don't have a specific job-related reason to be reviewing

Annaccone provided the following advice for athletic trainers:

- **Obtain written consent:** Always secure written authorization before sharing patient information, even with coaches or administrators.
- **Use secure communication channels:** Avoid discussing medical information via unsecured emails, text messages or social media. Use encrypted platforms or secure health care communication tools.
- **Limit access:** Only share information with individuals who have a legitimate role in the athlete's care.
- **Maintain physical and digital security:** Store paper records in locked cabinets and use password-protected or encrypted digital records. Also check with your employer and/or legal counsel on how long records need to be kept before being properly destroyed.
- **Be mindful of conversations:** Avoid discussing patient information in public or where unauthorized individuals might overhear.
- **Follow institutional policies:** Adhere to your employer's policies regarding health information security and confidentiality.

Additional Laws

Besides HIPAA, there are certain laws, both state and federal, that athletic trainers should familiarize themselves with for any additional compliance when it comes to information security, such as the Health Information Technology for Economic and Clinical Health Act.

"This strengthened HIPAA Security and Privacy Rules as they apply to 'business associates,'" Robell said. "As ambassadors of our patient's health information, it is important for ATs to understand how our technology vendors are required to protect and secure protected health information. Business associate agreements are now required for IT vendors storing protected health information."

In addition, Robell said, ATs should be aware of the General Data Protection Regulation.

"ATs in clinical settings who work with an international patient population, specifically those who reside in the European Union, should be aware of how these regulations apply to both communication and technology," he said.

As far as state practice acts were concerned, Robell said it's always best practice to consult with your state licensure board for any additional information security and/or data regulations that apply to the use and disclosure of PHI.

Best Practices

What are most important best practices for ATs

when it comes to compliance with information security issues regarding patient records?

Robell said that when creating or accessing patient records, it's important to always consider the device you are using (laptop, mobile device, desktop) as well as what connection is allowing you to access those records (internet/intranet, public Wi-Fi) and to assume electronic communications aren't secure unless confirmed through a secure network or a virtual private network (VPN).

"Having established policies and procedures that ensure secure access to patient records, including using a VPN when accessing data through an unsecured network, strong and rotating password authentication as well as only using authorized devices to access patient data," he said.

There are several best practices for ATs to adopt when it comes to compliance with information security issues regarding patient communications, including:

- Establish a standard for patient communication that foster "minimum necessary" information to satisfy a particular task. Many times, ATs are at the front door of the medical system in their setting. They routinely interact with colleagues who don't have the same responsibilities regarding patient data. Applying "minimum necessary" concepts can help safeguard against inadvertent disclosures.
- Establish a secure IT platform for otherwise informal patient communications, such as telehealth, text messages, emails and phone calls. As mobile patient communications expand, it's the AT's responsibility, as data ambassadors, to ensure their patients' data is secure and protected in transit and at rest. Choosing the right software vendors helps ensure the same protections apply to mobile communications.
- Establish a method for documenting relevant patient communication in the electronic medical records, including phone calls, text messages, emails and/or telehealth visits.
- Defer, when able, to verbal, private, documented communication with patients, parents, team physicians and other adjunct health care providers when discussing PHI. If electronic communication is necessary, always use a secure platform on a trusted network. Finally, using "minimum necessary" information to satisfy the task is always preferred.

Biometric Data

What are some best practices for ATs when it comes to compliance with information security issues regarding patient biometric data collection?

According to Hardee, ATs should implement secure storage locations (electronic or otherwise) prior to data collection, obtain written consent from patients prior to data collection and develop a process for patient access to personal data.

Hardee said if the media requests medical information on an athlete, athletic trainers should discuss and obtain consent to release medical information to the media prior to participation. While many athletes may initially be opposed to the release of information to the media, they often come to realize that controlling their own narrative is more advantageous than abstaining from commenting and allowing the public to come to their own conclusions.

Annaccone said ATs should never disclose an athlete's medical information to the media without written consent from the athlete, or their legal guardian, if they are a minor.

"Instead, they should refer media inquiries to the appropriate department, such as the athletic director, team physician or designated public relations personnel," he said. "If the athlete or their family chooses to release information, it should be done through official channels and with proper documentation."

Another key component in this space concerns training, Robell said. ATs in secondary schools, intercollegiate and emerging settings (such as hospital, clinic and industrial settings) should consult with their administration for any required training. Health Information Management Systems Society has professional certifications in both health care information management and certified professional in health care information and management systems.

Hardee said institutional lessons and requirements sometimes briefly touch on these subjects. ATs can often rely on the legal and/or media team that represents the organization as well.

"New analytics and mobile technology coming into the sports medicine and performance space create new challenges for ATs to ensure data security, data management and data access," Robell said. "As technology in this space evolved in recent years, companies now often include EMR modules and workflows into their platform to offer more robust insights and data analysis. It's important to have a strategy that details how PHI across all data assets is managed, processed, stored and accessed. [Business associate agreements], a requirement under HIPAA and best practice, help extend these strategies to the growing number of technology vendors we work with."

Q&A, *continued from page 08*

some coaches may also want to know about the mental health disorders of an athlete. This is the conundrum the AT finds themselves in when a coach wishes to know of the mental health issue of an athlete, similar to a physical injury.

The AT, when establishing a working relationship with a coach, may want to go over the confidentiality issues associated with mental health concerns with athletes, and that the AT isn't at liberty to inform the coach of these issues unless the athlete expresses harm to themselves or others, including the coach. The athlete may well be fearful of mental health stigma because while the coach may understand when an athlete can't compete because of a physical injury, the coach, teammates or others may possess a stigma against the athlete for their mental health challenge.

Read More on NATA Now

Visit NATA Now, **www.nata.org/nata-now**, for more from this conversation with Timothy Neal, LLMSW, ATC, CCISM. In this Q&A continuation, Neal discusses how to start a discussion around mental health and substance abuse and other key points an AT should keep in mind.

CASE SUMMARY

Family of Soccer Player Who Died on Field Settles With High School, Health Care Provider

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.*

The family of a Kentucky high school soccer player who collapsed during conditioning has reached a settlement with the district high school, local diocese and the health care organization that employed the athletic trainer for the high school.

While the exact role of the athletic trainer in this situation is unclear, the case is important for athletic trainers because the health care organization that employed the athletic trainer was a defendant in the litigation filed by the family. It's important to note that the settlement was negotiated immediately prior to the scheduled start of the trial on the family's lawsuit. The case is also important for athletic trainers because it involved the lack of an immediately available automated external defibrillator (AED).

After the initial COVID-19 pandemic shutdown, the Kentucky High School Athletic Association allowed sports to resume during the first year of the pandemic. The student athlete collapsed on the final sprint of conditioning that day and was later pronounced dead.

It's important to note than an AED wasn't used on him until EMS arrived, about 12 minutes after his collapse, according to the wrongful death lawsuit the family filed.

"We are pleased that the lawsuit we filed for the wrongful death of [student athlete] has been resolved," the family's attorney said in a public statement. "We were privileged to represent two very courageous parents, who brought this lawsuit not just for themselves, but to educate and compel change in order to put safety as the highest priority in high school sports.

"We all saw what happened when an [AED] was timely used on Damar Hamlin. Every school in the state of Kentucky should have an AED and an emergency action plan that is practiced with simulated emergencies several times a year. A child's life is worth it."

Hamlin, a Buffalo Bills safety, went into cardiac arrest on the field in Cincinnati after taking a hit during a football game in 2023. The use of the AED and the timely action by athletic trainers on the scene has been universally credited with saving Hamlin's life. Hamlin has returned to play football for the Bills.

The local diocese said in a statement, "[The soccer player] was a loved and respected student, athlete and friend at [the] high school. Our school and faith community continues to grieve for him. We admire the efforts of his parents … to increase the safety of student athletes. … With this legal settlement, it is our hope that the … community can help support [the] effort to honor the life of their son."

The athlete was a 16-year-old rising junior who also played for a local soccer club.

The coroner's report listed the chief complaint as cardiac arrest, but the medical examiner ruled the cause of death as "undetermined," according to published reports. The toxicology report tested for 63 substances, which all came back negative.

The settlement amount hasn't been disclosed, according to published reports.

COPE COLUMN

Understanding Boundary Crossing in Athletic Training

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

One of the most common NATA Code of Ethics[1] violations is boundary crossings. Boundary crossing is when one person impedes a real or imaginary line that signifies a limit. For example, an athletic trainer touches a patient or coworker inappropriately; tells inappropriate "jokes"; or sends inappropriate texts, emails or direct messaging that make the other person uncomfortable or hurt.

In a medical profession, the practitioner is obligated to protect their patients and do no further harm. The patient has an expectation to feel safe when being treated by the athletic trainer, as should the peers of an athletic trainer. That imaginary line that is a boundary is spelled out in the NATA Code of Ethics, the Board of Certification for the Athletic Trainer Standards of Professional Practice[2] and state practice acts. No one should be touched when they don't give consent to be touched. No one deserves to be harassed or pressured to consent to a relationship, physical or emotional, that they aren't comfortable being in.

Professional boundaries are created to maintain a safe place for professionals and the public they serve. Professional boundaries allow for a professional relationship where both parties are comfortable with no expectations of a social, physical or sexual relationship. The NATA Code of Ethics and Athletic Training's Shared Professional Values[3] lay out professional boundaries.

NATA Code of Ethics Principle 1, which is associated with the Athletic Training's Professional Values of respect, caring and compassion and competence, states, "In the role of an athletic trainer, members shall practice with compassion, respecting the rights, well-being and dignity of others. 1.1 Members shall act in a respectful and appropriate manner to all persons." Principle 4 states, "Members shall

not engage in conduct that could be construed as a conflict of interest, reflects negatively on the athletic training profession, or jeopardizes a patient's health and well-being."

The BOC Standards of Professional Practice has similar language, as do most state practice acts.

There is an inherent power imbalance between an AT and their patient. There is a similar power imbalance between an AT and an AT who may see them as a mentor or someone worth seeking advice from. This power comes from the perception of a patient or peer whose future can be influenced by the AT. Playing time, work time, healing time, future employment, committee work all feel threatened by an AT with influence.

The role an athletic trainer often puts them in a position that makes physical boundary crossing possible. ATs often palpate injured body parts and, at times, those injured body parts are in close proximity to intimate body areas. Inappropriate touching of a patient is unfortunately quite common. Sometimes, it's accidental and causes conflict because the patient wasn't aware of what or where the practitioner was going touch or why. Sometimes, it's intentional and completely inappropriate.

ATs often form tight, family-like bonds with their patients, teams and coworkers. The time spent together and the stresses that come with the work environment can create an environment in which emotional boundaries are crossed. All the time spent together may lead to the feeling of an emotional connection that can lead to crossing the line due to sense of a relationship that isn't there. Sharing of personal problems and disclosing personal information to a point that one of the parties is uncomfortable is boundary crossing.

As mentioned previously, all the time peers and patients spend together makes it difficult to create personal relationships outside of work. This often leads to social boundaries being crossed through things such as the use of social media, accepting inappropriate gifts or even socializing outside of the professional setting.

Social media has its benefits and hazards. Sharing information through social media can be educational. When an AT shares pictures or information of an injury without written permission and explaining why it's being shared, that's crossing a barrier.

Often an AT's patient can be very thankful for all their efforts and helping them get back to what they love. They often will give a token of their appreciation. The AT needs to be cautious that that gift doesn't become a conflict of interest, isn't expected and doesn't cross the line.

Because ATs often live in the same communities with their patients and peers, they're bound to socialize in similar places, shop in the same places and go to the same movies. The AT must be cautious as to how they interact in those settings, and how the initiation of contact is made. It's polite to say "hi" and have a pleasant conversation. It's completely different to offer an underage patient alcoholic beverages or to create a "dating" environment, especially if it's unwanted.

I have already mentioned a few factors inherent to the athletic training profession that, by nature, can contribute to boundary crossing. The practice of palpating an injury and time spent together are two factors that can lead to boundary crossing. It's vital that a professional environment have policies and procedures that discuss different relationships and actions that could create a conflict of interest and avoid boundary crossing. Often, teams, including the AT, can meet in a social environment to build teamwork and form a team mentality. Even in those environments, the AT must stay professional.

There are times the patient may cross boundaries. The AT must recognize those signs and ensure they aren't encouraging any feelings or actions that would end up crossing the line. The AT should have a supervisor they can go to immediately and discuss any conversations or actions that might be heading in that direction, for both the AT and patient's protection. It's human nature to want to be liked and found attractive. It's of the utmost importance that the AT doesn't allow their personal vulnerabilities to cause them to drop their professionalism and make questionable decisions.

A patient has trust in the AT as a caretaker of the patient's well-being. If that trust is ever broken, it's nearly impossible to get it back. Athletes and patients talk to each other. When a patient's trust is violated, depending on the depth of violation, they will often talk with other patients. This can lead to patients no longer trusting the AT with any health care issues, leading patients to no longer sharing information about injuries and no longer reporting to the AT. This can result in compromised care of the patient.

There is a similar trust within coworkers and peers, especially peers looking to a mentor. Violation of that trust within peers can lead to alienation. The AT who has had their trust violated can withdraw and the care they are providing to their patients can be affected. The mental and physical effects of such a violation of trust can be devastating over time.

Barrier crossing can be avoided. I have already mentioned the importance of policies and procedures that discuss the relationship between AT and patient as well as coworkers. Consistency in professional ethical practice is vital. When your patients know what to expect from their AT, they're less likely to engage in behaviors that would lead to questionable decisions.

An AT's coworkers would also know what lines exist and what can't be crossed. There must be an environment in the work setting that encourages employees who feel uncomfortable about an interaction to discuss with a supervisor. If the supervisor is the one making an employee uncomfortable, there must be a chain of command to report to. There also needs to be someone a patient can report uncomfortable or inappropriate behavior to. It's also important that some of the 50 CEUs an AT obtains every two years include cultural competencies. This can help avoid contact and interactions that may be inappropriate because of cultural boundaries. An AT needs to know where the lines are to avoid crossing them.

The crossing of professional boundaries can lead to losing the trust of the community the AT serves, which can reflect negatively on the entire profession. There needs to be a professional line that creates physical, emotional, social and sexual boundaries. ATs are mandatory reporters. If an AT hears or sees boundaries being crossed, that AT has an obligation to protect the patient, peers and the athletic training profession. NATA Code of Ethics Principle 2.3 states that members shall refrain from and report illegal or unethical practices related to athletic training. Professional ethical practice must be consistent and practiced. This consistency helps others know where your lines are and reminds you of lines you can't cross.

References

1. National Athletic Trainers' Association Code of Ethics, https://www.nata.org/sites/default/files/nata_code_of_ethics_2022.pdf
2. Board of Certification for the Athletic Trainer, https://bocatc.org/athletic-trainers/maintain-certification/standards-of-professional-practice/standards-of-professional-practice
3. Athletic Training's Shared Professional Values, https://www.nata.org/sites/default/files/prat_5infographichandout-final.pdf

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