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NATIONAL ATHLETIC TRAINERS' ASSOCIATION

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The Rodchenkov Anti-Doping Act of 2019

Understanding the federal law that prosecutes administrators and team health care providers who influence doping

BY PAUL MASSARO, POLICY ADVISOR, U.S. HELSINKI COMMISSION; TRAVIS T. TYGART, CEO, U.S. ANTI-DOPING AGENCY; AND KEN WRIGHT, AT RET., BOARD OF DIRECTORS, U.S. ANTI-DOPING AGENCY

The Rodchenkov Anti-Doping Act of 2019 (Rodchenkov Act)[1] is a federal law that criminalizes doping in international competitions. Although not the first law of its kind to establish criminal liability for doping, it's the first law of its kind to do so with extraterritorial jurisdiction. The law is meant to combat criminality of those surrounding the athlete – the officials, administrators, coaches, physicians and athletic trainers – who often make systematic doping possible.

It does not criminalize the conduct of individual athletes, thereby encouraging them to step up and protect their rights and their sport by helping hold those around them accountable. Specifically, the Rodchenkov Act puts legal force behind the fight against doping fraud in order to strengthen the global anti-doping system while simultaneously upholding the current international legal framework of the World Anti-Doping Code.

With the passing of the Rodchenkov Act, "doping fraud" became a new federal crime.

Doping fraud is defined as knowingly carrying into effect, attempting to carry into effect or conspiring with any other person to carry into effect a scheme in commerce to influence the use of a prohibited substance or prohibited method at or in preparation of any major international sports competition.

The terms "prohibited substance" and "prohibited method" derive their definition from the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Doping in Sport, a treaty ratified by the U.S. Senate and, as such, part of U.S. federal law, and agreed to by countries around the world.

The UNESCO Convention identifies the World Anti-Doping Code as the source for these two terms. The Code's prohibited list is therefore given legal force by this law.

"Scheme in commerce" is defined as any scheme effected in whole or in part through interstate or foreign commerce of any facility for transportation or communication. In practical terms, this means

USADA-Approved Resources on Anti-Doping

- **HealthPro Advantage:** As health care professionals who care for athletes, it's essential that ATs understand anti-doping rules to ensure success in program compliance and clean competition. HealthPro Advantage is a free online resource that provides educational tutorials related to World Anti-Doping Agency rules and regulations. **www.usada.org/resources/healthpro**
- **Global DRO:** The Global Drug Reference Online provides athletes and support personnel with information about prohibited status of specific medications based on the current World Anti-Doping Agency prohibited list. Global DRO doesn't contain information on, or that applies to, any dietary supplements. **www.globaldro.com/Home**
- **Supplement 411:** This resource provides information on how to navigate the complex and risky world of vitamins, minerals and other nutritional or dietary supplements. Supplements 411 provides a "high risk" list of products that have tested positive for performance enhancing drugs, and it outlines the benefit of third-party certified supplements as a way to reduce the risk associated with supplement use. **www.usada.org/athletes/substances/supplement-411**

any action by a person that makes use of transportation or communication in order to influence a competition via prohibited substances and prohibited methods is considered fraud.

"Scheme in commerce" is distinct from anti-trafficking laws, which focus on the substances themselves and targets the scheme to defraud athletes, corporations and nations.

A U.S. nexus must be established to enforce the Rodchenkov Act. In order to establish this U.S. nexus, the competition that is to be influenced by the scheme must be one in which 1) one or more U.S. athletes and three or more athletes from other countries participate and 2) the competition organizer or sanctioning body receives sponsorship or other financial support from an organization doing business in the U.S. or compensation for the right to broadcast in the U.S. Lastly, the competition must fall under the World Anti-Doping Code.

The Rodchenkov Act applies within the borders of the U.S. just as it would apply elsewhere. The decisive quality of whether the law applies to a competition or not is the establishment of the U.S. nexus, not where the competition takes place. If the above conditions are satisfied, then the law applies.

Those tried and found guilty under the Rodchenkov Act face criminal penalties of fines and jail time. Individuals face up to 10 years in prison and a fine of up to $250,000, while entities or corporations that are found to be involved face a fine of up to $1 million.

Moreover, any property used or intended to use to commit the crime is forfeited to the U.S. government. There is no private right of action to sue in civil court for damages in the Rodchenkov Act.

Rodchenkov Act cases will similarly rely on strong law enforcement cooperation. The U.S. will build cases based largely on whistleblower and athlete-provided evidence and then seek to make arrests in collaboration with law enforcement in countries where the crimes occurred and/or where the perpetrators are located.

The credentialed athletic trainer is a health care provider who must adhere to all applicable state and federal laws, such as the Rodchenkov Act, as well as standards defined by regulatory boards (state and federal), Board of Certification Inc. Standards of Professional Practice[2] and the NATA Code of Ethics.[3]

Athletic trainers recognize and appreciate the law's purpose to protect athlete health and well-being, and ensure the fairness of athletic competition. The athletic trainer should be fully aware of their scope of practice both nationally as an athletic trainer and within the state they practice, and refrain from knowingly or unwittingly participating in any doping fraud either by providing banned substances or scheming to have banned substances provided to athletes.

Athletic trainers need to be aware of all athletes they care for, especially athletes that compete internationally as well as at the intercollegiate level, and ensure compliance with anti-doping regulations.

To assist in educating athletic trainers and all health care providers of athletes, as well as those who support athletes whether they are formally licensed as health care professionals or not, the U.S. Anti-Doping Agency (USADA)[4] created resources for those interested in learning more about their role in guiding and advising athletes on staying true to the rules of clean sport.

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Q&A

ATTORNEY TAKES DEEP DIVE INTO DEPTHS OF TITLE IX

Tammi Gaw, MS, ATC, Esq.

What are the most important aspects of Title IX that apply to athletic trainers? This landmark legislation has had a profound impact on providing educational and sports opportunities for female athletes as proponents have attempted to level the playing field between women and men for almost 50 years. But has Title IX achieved its goals and how has it impacted what athletic trainers do every day?

Tammi Gaw, MS, ATC, Esq., is the founder and executive director of Affiliation: Advantage Rule, a consulting firm based in Washington, D.C., that provides worldwide consulting services to diverse clientele in the sports-specific aspects of business, law, medicine and social justice. Gaw is also a recognized expert on Title IX.

Read on for a Q&A with Gaw about the importance of Title IX, enacted June 23, 1972, and what athletic trainers should know about this monumental law.

Q. As we approach the 50th anniversary of the enactment of Title IX, what do you think has been its significance in terms of education, sports and women's rights?

No one can argue that Title IX hasn't been primarily responsible for increased educational opportunities for women and has opened countless doors for women in sports. It provides protection for parties from discrimination on the basis of sex and from retaliation. It also provides an avenue for relief in the case of sexual harassment and assault in educational settings.

All of the opportunities and protections provided by the law have been instrumental in advances made by women in both their sporting and professional careers. That being said, women are still underrepresented in coaching, administration and in athletic training leadership, so we have a long way to go.

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Q&A, *continued from page 03*

Q. What are the most important aspects of Title IX that apply to athletic trainers?

One of the most common complaints I hear involves how medical staffing coverage differs between men's and women's sports. Sports medicine departments should ensure that assignment of athletic trainers are identical for same or similar sports, such as track and field or softball and baseball. This includes practices and home and away games.

Title IX is also at the heart of protections against sexual harassment, which has been very much in the news around athletic departments and educational institutions. Athletic trainers who work in education settings are responsible for complying with Title IX regulations in all aspects of their practice.

Q. What are the most important legal cases involving Title IX that athletic trainers should know about?

Bostock v. Clayton Co was a 6-3 Supreme Court decision that held that Title IX protects LGBTQ+ students. In light of some of the state legislations passed recently targeting transgender athletes, athletic departments and sports programs will be under increased scrutiny to ensure they are not discriminating against participants. Athletic trainers need to ensure that they continue to provide quality and equal care to their athletes regardless of their sexual orientation or gender identity.

Recently, several athletic departments have come under fire for not acting or responding to reports of sexual misconduct and assault. Athletic trainers should monitor these cases to see how they can incorporate protections or reporting procedures into their practices or departments.

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RODCHENKOV ANTI-DOPING ACT, *continued from page 03*

USADA is the congressionally mandated independent National Anti-Doping Agency for the U.S. and was created in 2000 to protect clean athletes, inspire true sport and protect the integrity of competition.

Additionally, USADA provides a number of ways for athletic trainers, other health care professionals or athletes to stand up for clean sport by reporting any information about possible anti-doping rule violations.

USADA's PlayClean Line is available by email at **playclean@usada.org** or phone at 877-Play Clean (877-752-9253).

For athletic trainers, two simple key takeaways need to be remembered: Stay informed and know the law. Using this simple approach, knowledge of the global anti-doping system and its legal force behind the fight against doping fraud will enhance compliance with the new federal law.

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CASE SUMMARY

Negligence Lawsuit Against AT Can Proceed As Medical Malpractice Case, Illinois Court Rules

An elite football player and a teammate at an Illinois high school were involved in a destructive collision during the first quarter of a football game. The collision was so violent that it broke the teammate's ribs and ruptured his spleen. While that player was pulled from the game, the elite athlete remained in the contest.

Later in the game, the elite athlete collapsed on the sideline from a subdural hematoma. The hematoma, in turn, caused a massive brain injury, resulting in the student having to spend seven months in the hospital. The effects of the injury were so severe that more than two years after the incident, the student was forced to communicate by hand squeezes and eye blinks.

The student's parents sued the company and the athletic trainer the school district contracted to provide health care services during the game.

The parents asserted that the damage from the concussion suffered by their son didn't have to be so severe. They claimed that those responsible for ensuring his safety didn't check him for a possible brain injury until the fourth quarter of the game.

In their lawsuit against the company and the athletic trainer, the parents specifically maintained that the company hired by the school district to staff the games was required to deploy competent personnel to provide on-site injury care and evaluation. The parents also asserted that the contracted company was required to provide athletic trainers for all of the school's football games.

The lawsuit also accused the company of negligence due to its failure to investigate and tend to the boy's injuries at an earlier point in the game. According to the lawsuit filed by the parents, those responsible for the safety of the athletes should have examined the boy for a possible concussion in the first quarter. Instead, the parents claimed, the company staff, including the athletic trainer, permitted their son to keep playing into the fourth quarter, thus allowing him to develop numerous brain bleeds because of additional hits to the head.

The key issue before an appellate court concerned exactly what type of proof an injured student athlete, or their parents, needs to pursue a claim against an athletic trainer. The

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NEGLIGENCE LAWSUIT, *continued from page 04*

court ruled that the services provided by athletic trainers who work in the high schools, such as the one working this football game, were services that fit within the parameters of medical care or other healing arts.

The practical impact of this ruling meant the negligence claim the parents were pursuing regarding the athletic trainer's failure to identify and treat the player's brain injury more quickly was required by Illinois law to proceed like a medical malpractice claim.

The ruling thus had the same significant impact on this case, and any other case like it: A plaintiff must submit to the court an affidavit from a health care professional stating that they have reviewed the relevant records, prepared a report and concluded that there is a reasonable and meritorious cause for filing of such action.

The court rejected the argument made by the company and the athletic trainer that the required report and affidavit must come from a similarly licensed athletic trainer. Instead, the court stated, any physician licensed to practice medicine in all its branches could submit the affidavit and report.

The appellate court sent the case back to the lower court for a final determination of the case pursuant to this evidentiary ruling.

CASE SUMMARY

Drug Testing Program Didn't Violate Privacy Rights of Student Athletes, Court Rules

Several student athletes at a California university sued the NCAA after it instituted a drug-testing program for athletes who wanted to participate in the Pan-American Games.

NCAA rules specifically required that each student athlete had to consent to drug testing if they wanted to participate. The student athletes claimed that the drug testing procedures violated their privacy rights under the California Constitution.

The drug testing procedures included monitored urination and gathering information about the medical and physical condition of the athlete. The subsequent lawsuit centered around the issue of whether the NCAA's drug testing violated the student athletes' privacy rights under Article I, Section I of the California Constitution, which states that all individuals have certain inalienable rights, including the right to privacy.

The California Supreme Court used a three-part test in determining whether the student athletes assertion of privacy invasion was valid under the state constitution. The court also reviewed the competing interests of the parties to determine which one had the more valuable and compelling public imperative.

First, the court stated that monitoring urination and questioning a student athlete's medical and physical condition qualified as legally protected privacy interests. Secondly, using a reasonable expectation of privacy test, the court stated that student athletes were naturally required to undergo scrutiny of bodily conditions.

The court also stated the student athlete has the choice to withdraw from athletic participation and not undergo drug testing. Therefore, the student athlete's reasonable expectation of privacy was diminished, according to the court.

Thirdly, the court determined that the NCAA's conduct of monitored urination and gathering of medical and physical information did not constitute a serious invasion of privacy. Finally, the court stated that the drug-testing program could reasonably be construed as furthering the NCAA's legitimate interest in maintaining the integrity of the intercollegiate athletic program.

Therefore, the court concluded that, although the student athletes had legally protected privacy interests in monitored urination and gathering of private information, their expectation of privacy was diminished and the NCAA's drug testing program did not violate the student athletes' privacy rights.

In addition, the court allowed the drug testing as sound public policy since the NCAA has a legitimate interest in safeguarding intercollegiate athletic competition.

The court's ruling reversed a trial court's permanent injunction against the NCAA, thereby allowing the NCAA to resume its drug testing program.

Q&A, *continued from page 04*

Q. What are the most important regulatory and compliance developments involving Title IX that athletic trainers should know about?

In January, the previous administration published guidance that LGBTQ+ students are not expressly protected by Title IX. That guidance conflicted not only with previously issued guidance from the Obama administration, but it also contradicted recent court decisions.

In April, the Department of Justice issued a memo clarifying that Title IX does in fact ban schools from discriminating against LGBTQ+ students, and President Joe Biden appointed Pamela Karlan, the lawyer who represented the plaintiffs in the Bostock case, to be deputy assistant attorney general at the U.S. Department of Justice.

Recent court decisions have also found that academic medical programs run through hospitals can also be subject to Title IX in cases that allege sexual harassment.

What athletic trainers in all settings should keep in mind is that Title IX does, in fact, protect LGBTQ+ students, and that it also provides an avenue to pursue sexual harassment claims in employment settings that provide medical education programs.

Q. What should an athletic trainer do if they think there has been a Title IX violation at their workplace?

Keep in mind that Title IX doesn't just protect against discrimination, it also protects against retaliation for reporting Title IX violations. If your institution has a Title IX coordinator, utilize them as a resource. If an athletic trainer believes there has been a violation, they shouldn't keep quiet and assume that it will go away.

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Q&A, *continued from page 05*

In some cases, a failure to report a violation can make the athletic trainer liable in an ensuing investigation or litigation. This is particularly true in the case of sexual assault or harassment at educational institutions where athletic trainers may also be mandatory reporters. (To learn more about mandatory reporting under Title IX and the AT's duty to report, see the Winter 2020 *Sports Medicine Legal Digest* p. 2.)

Q. What if it's the athletic trainer who is being investigated for a Title IX violation?

The best way to avoid a Title IX investigation is to ensure that you understand Title IX compliance requirements. Athletic trainers should understand the importance of documentation for many reasons, but robust documentation can also be used as evidence in the event that an athletic trainer is investigated for a violation.

There is also a difference between an investigation conducted by an institution and a legal investigation done as a result of a criminal complaint or civil case. In both scenarios, an athletic trainer is best able to defend themselves if they have strong documentation to back up their side of the story, and can show that they are educated about Title IX and have implemented and complied with policies in accordance with the law and legal guidance.

Q. Regarding the recent controversy about the women's vs. men's weight room at the NCAA Division I basketball tournaments, do you think that was a Title IX violation?

It's important to remember that Title IX applies to educational programs that receive federal funding. Because the NCAA is a private organization that doesn't receive federal money, Title IX doesn't apply to them.

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COLUMN

Informed Consent: The Foundation to Patient-Centered Practice

BY JAMIE L. MUSLER, LPD, LAT, ATC AND DAVID S. COHEN, MS, ATC, ESQ.,
NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

In its simplest form, informed consent in health care is nothing more than providing a patient with sufficient relevant information about risks and benefits to make an educated and autonomous decision about their well-being and care.

Informed consent was formally recognized by the U.S. courts in Mohr v. Williams[1] in 1905. The initial concept of consent was a simple need for a patient to give consent for medical treatment. The concept was later expanded requiring the health care provider to "inform" patients by providing them with adequate information relevant to their treatment decisions in order to get the patient's permission "consent" to perform the procedures after a series of legal cases after a series of legal cases (Natanson v. Kline, Mitchell v. Robinson and Canterbury v. Spence) in the 1960s and early '70s.

In 1975, the courts further expanded the standard requiring the provider to deliver information that a "reasonable person" would want to know. In the absence of providing such information, the consent is not informed and therefore not valid.

Consent can be raised as a defense to a tort claim by stating that the defendant is justified in acting. Consent can be expressed by way of a plaintiff's words or conduct, and not through unexpressed feelings. Consent is not present when general customs allow some conduct, but tort conduct is beyond the boundaries of safety.

If consent is given to a health care provider to treat an area, it does not imply or grant consent to treat another area. Implied consent is applied to a health care provider by an unconscious patient if the patient requires attention reasonably necessary to preserve life and limb. In an emergency, if time allows to gain consent, consent must be sought. Consent can't be obtained by lying or failing to disclose relevant facts.

Like many aspects of the athletic trainer's practice, a seemingly simple concept becomes more complex in reality. Informed consent can mean different things depending on the context and can be achieved in several ways.

To better understand the concept and how it can be implemented in practice, it's important to first look at the foundational principles, including ethical, legal, administrative and risk management, that are addressed with the informed consent process.

Ethical

- Informed consent supports the patient's autonomous decision-making without being influenced by biased opinions. In sports, athletes are under considerable pressure to make decisions that might not be in their own best interest. Coaches and teammates who want to win, and cultural influences, including sayings such as, "no pain, no gain," "no 'I' in team," "you can't make the club in the tub" and "you're not injured, you're hurt," can negatively influence the patient's decision-making process.
- Informed consent, which an athletic trainer is equipped to gain, allows for a long-term view of the patient's health and well-being, not just the immediate, "Can I play," focus. Informed consent supports a long-term, life-focused, patient-centered decision-making process.
- Informed consent allows the athletic trainer to meet the ethical obligation to put a patient's needs first and comply with professional standards.

Legal

- While there are variations by state and practice regulations, informed consent is often required by law for athletic trainers and physicians before treatment.
- Informed consent is a critical component of defense against claims of providing unwanted medical care resulting in a lawsuit alleging assault and battery by an athletic trainer, for example.

Administrative and Risk Management

- Informed consent assures the patient is involved in making critical decisions about their care. This "sharing" of decision-making may

reduce the athletic trainer's liability and negative legal outcomes.

- Informed consent can bring others (family, professionals, legal counsel) into the decision-making process contributing to informed decision-making.
- Patients who are well informed and feel they participated in the decision-making process are less likely to feel negatively toward the athletic trainer and more likely to accept responsibility for the outcome.

At the time of publication, 27 states have specific statutes defining informed consent. Although each statute varies, there are generally five key components to the informed consent process: disclosure, understanding, competency, voluntary and assent/agreement.

- Disclosure: Informed consent must include adequate information for the patient to make an informed decision. The athletic trainer must provide sufficient information including risks, benefits and alternatives to assure a reasonable person has the needed information to make an informed decision.
- Understanding: The patient must fully understand the information disclosed by the athletic trainer. Since consent can't be given without understanding, the athletic trainer may need to use simple language, anatomical models, images and other aids to assure understanding.
- Competency: The patient must have the ability to reason and appropriately process the information provided to them by the athletic trainer. Central to competency is the ability of the patient to understand the consequences of their decision by weighing the options against their short- and long-term best interests. In moderate- to high-risk situations involving a minor, a caregiver should be involved in the informed consent process and must provide assent since most states require parent or guardian consent for individuals under the age of 18 years old.
- Voluntary: The patient must give consent voluntarily without coercion or the influence of other individuals or factors.
- Assent: The patient must provide a positive response or decision to proceed with the process, treatment or procedure. For low-risk decisions, a verbal assent may be sufficient while consent to high-risk decisions or ongoing treatment plans should be memorialized in writing.

Implications on Clinical Practice

As health care providers, it is best to think about informed consent not as a single event but as an ongoing component of good practice. Informed consent can be viewed on a spectrum that includes low-to high-risk situations.

Low-risk situations require lower levels of legal proof and high-risk situations require higher levels of proof. As an example, high-risk situations, such as an athlete with an injury, condition or illness that increases the chance of permanent disability or death, needs to sign a formal, written informed consent document prior to participating. In contrast, a simple verbal acknowledgement might be sufficient proof to progress a patient with a modification to their exercise plan.

Regardless of the consent process, the athletic trainer should document the process in the patient's medical record to demonstrate proof.

Incorporating principles of informed consent can be overwhelming. Athletic trainers should focus on the clinical decision-making aspect of their practice. All athletic trainers routinely make patient care decisions; most fall in the low- and moderate-risk categories. Low-risk decisions, such as modifications to an existing treatment plan or return to play after a minor injury diagnosis,, can be completed verbally with an explanation of the athletic trainer's findings, description of relevant risks and a final assent from the patient that they want to progress or return to play. The AT should also include a brief description of the information provided and document the patient's positive or negative response to continue in the patient's record.

Moderate-risk decisions, such as administering over-the-counter medications, advanced or complex treatment procedures or initial comprehensive treatment programs, can be completed in writing with informational handouts or standardized forms.

As an example, the administration of over-the-counter medication could include an informational handout of relevant indications, contraindications, dosing and potential side effects. The AT could verbally summarize the information, answering any questions, verify an understanding and require the patient to verify by signature that they received the information and voluntary agreed to take the medication. The signed verification would then be included in the patient's medical record as documentation of informed consent.

High-risk decisions, including return-to-play decisions that involve increased risk of injury,

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Q&A, *continued from page 06*

In fact, in 1999, the Supreme Court held in NCAA v. Smith that, despite receiving dues payments from universities that receive federal funding, the NCAA itself was not subject to Title IX.

Q. Do you expect more, less or the same amount of Title IX litigation in the next five years compared to the past five?

I expect more litigation because many schools, and athletic departments, have been out of compliance for years. Indeed, some have never actually complied with the letter of the law. One reason that litigation may increase in the short term is because, during the last presidential administration, the U.S. Department of Education put in place some incredibly damaging, and arguably illegal, policies. While some of those rules and policies have already been reversed by the Biden administration, some will need to be handled in court. I also think we will see litigation in response to cuts made by educational institutions at all levels due to COVID-19.

Q. What has been the impact of the COVID-19 pandemic in this area?

COVID-19 has brought public attention to ways that universities and educational institutions continue to fail to comply with Title IX. Schools that allow different numbers of fans at same or similar sports (i.e., baseball and softball or men's and women's basketball) are being investigated for Title IX violations, as are schools that are cutting sports in response to lost revenue.

permanent disability or death, should be formalized in writing and, in some cases, may include contractual verification of informed consent with appropriate witnesses.

Consider a patient with multiple concussions, documented heart condition or spinal pathology who is cleared to participate or is medically disqualified, but challenges the decision. These situations are rare but require the highest level of legal proof of informed consent. The AT should assure legal counsel and institutional administration is involved and formal documentation of the process is completed consistent with state law and sound legal practices.

Whether it's a simple verbal consent or high-stakes contractual process, the AT has an ethical and legal obligation to incorporate informed consent into their daily practice. Good practices of informed consent is critical to high-quality patient-centered care and supports positive outcomes for the patient and athletic trainer.

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Clinical Decisions and Informed Consent Strategies by Liability Risk

Typical AT Decisions	Level of Risk	Informed Consent Format	Proof of Consent
On-field evaluation/decision to remove	Moderate	Verbal	Document in medical record
Injury/illness evaluation/diagnosis	Moderate	Verbal	Document in medical record
Referral to team/consulting physician	Low	Written	Patient signature
Initiation of treatment/rehabilitation plan	Low	Written/standard form	Patient signature
Administration of over-the-counter medications	Moderate	Written/education handout	Patient signature
Medical procedures	Moderate	Verbal/written	Patient signature
Changes in treatment/rehabilitation plan	Low	Verbal	Document in medical record
Clearance/return to participation:			
• Routine/minor injury	Low	Verbal	Document in medical record
• With increased risk of injury/reinjury	Moderate	Verbal/written	Patient signature
• With increased risk of permanent disability	High	Contractual	Patient signature
• With increased risk of death	High	Contractual	Patient signature

LAW 101

A Continuation of Legal Terms To Know as an Athletic Trainer

Continuing our ongoing series, LAW 101 breaks down some of the legal issues athletic trainers should know, starting with legal terms. From glossaries of common legal terms to in-depth review of historic cases in sports medicine law, LAW 101 is intended to help athletic trainers better understand the risks and responsibilities that come with being a health care provider to a wide variety of patient populations.

Part II of Legal Terms To Know, compiled by *Sports Medicine Legal Digest* editors and legal experts, outlines common terms all athletic trainers should learn and continue to brush up on.

Affidavit

A written or printed statement made under oath, which can be used in court by either the plaintiff or defendant.

Appeal

A request made after a trial by the party on the losing side of a legal controversy for review by a higher court to determine if the outcome of the lower court was correct.

Brief

A written statement submitted in a trial or appellate proceeding, including the Supreme Court, that explains one side's legal and factual arguments.

Burden of Proof

The duty to prove disputed facts determined by whether it's a civil or criminal case. In a civil case, a plaintiff has the burden of proving their case by a preponderance of the evidence; but in a criminal case, the prosecutor must prove their case beyond a reasonable doubt.

Defamation

Any intentional false communication, either written or spoken, that harms an individual's reputation or respect in a tangible way.

En banc

Refers to a situation in which all judges of an appellate court are sitting together to hear a case, as opposed to the more routine disposition by panels of three judges.

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Jurisdiction
The legal authority of a court to hear and decide a certain type of case.

Liability
The legal responsibility of a person or company to compensate another individual or company for its deleterious actions that produce specific harm, such as loss of income or physical injury.

Plaintiff
A person or business that files a formal complaint with a court against another individual or business.

Reversal
The action of a court setting aside the decision of a lower court, often accompanied by a remand to the lower court for further proceedings.

CASE SUMMARY

Court Upholds Firing of Employee for Refusal To Take Drug Test

Editor's note: While this case does not specifically include an athletic trainer, it is instructive for ATs in what it determines about the rights of employees and employers, drug testing and workers' compensation claims.

An employee visited his company's health services department to report that his fingers went numb at work. He told his employer that he was going to file a workers' compensation claim. The employer then informed the employee that, if he wanted to file for workers' compensation claim, he had to take a drug test. When the employee refused to take a drug test, the company fired him.

The employee filed a lawsuit asserting the company discharged him illegally by retaliating against him for filing a workers' compensation claim. The company argued that it had a written substance abuse policy that required drug testing in seven different situations, one of which was initiation of a workers' compensation claim.

Specifically, the company noted, the policy stated, "Refusal to submit to testing will be cause for immediate suspension pending termination."

After being informed that he faced being fired, the employee still refused to take a drug test because he didn't think it should be necessary to take one when filing for workers' compensation.

Since the employee was fired for refusing to submit to drug testing when filing a workers' compensation claim, his discharge letter stated that he was fired for violating the company's substance abuse policy.

An injured worker could receive treatment at the health services department and return to work if he wasn't filing for workers' compensation, and the injury wasn't Occupational Safety and Health Administration-recordable, the company asserted. The company made a motion for summary judgment to the federal district court, requesting immediate dismissal of the case, claiming that the facts demonstrated the employee had no valid legal argument.

The court granted the request, effectively throwing out the employee's lawsuit. The employee appealed to the U.S. Seventh Circuit Court of Appeals. The appeals court noted that, during a deposition, when asked why he was fired, the employee said it was because he refused to take a drug test.

"The undisputed facts – including [the employee's] own deposition testimony – establish that [the company] terminated [the employee] because he refused to take a drug test upon initiation of a workers' compensation claim as required by [company] policy," the court ruled.

The court also took into consideration that other employees had initiated workers' compensation claims and weren't fired, and that the employee had filed a workers' compensation claim previously and not been fired.

The employee argued, in vain, that the company's policy discourages employees from filing workers' compensation claims. However, the employee was not able to identify anyone who had been discouraged from filing a workers' compensation claim.

The appeals court also stated that filing for workers' compensation wasn't the only situation in which the company's employees might face a drug test, so the company wasn't singling out employees filing for workers' compensation.

For these reasons, the appeals court ruled that the employee was fired because of his refusal to take the mandatory drug test, not in retaliation for filing for workers' compensation.