

SPORTS MEDICINE

LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

SUMMER 2024

02

PREPARING TO PRACTICE:
LEGAL AND ETHICAL TIPS
FOR NEW GRADS

03

Q&A: GENDER EQUITY SUBGROUP
DISCUSSES NEW NATA TOOLKIT

08

LAW 101: LEGAL TERMS ATHLETIC
TRAINERS SHOULD KNOW, PART IV



NATA
NATIONAL ATHLETIC TRAINERS' ASSOCIATION

IN THIS ISSUE

FEATURES

- 02** Preparing To Practice: Legal and Ethical Tips for New Grads
- 04** From PRAT: Navigating Regulations and Laws as a New AT
- 08** LAW 101: Legal Terms Athletic Trainers Should Know, Part IV
- 09** From COPE: Preventing Ethical Dilemmas for Early Professionals

CASE SUMMARIES & LEGAL COMMENTARY

- 06** Court Declines To Dismiss Case Against AT in Hockey Concussion Suit
- 10** AT Accused of Sexual Misconduct Terminated, Permanently Barred From Practice

Q&A

- 03** Gender Equity Subgroup Discusses New NATA Toolkit

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



Preparing To Practice: Legal and Ethical Tips for New Grads

Insight into avoiding potential pitfalls when starting out in the profession

BY KRISTIN CARROLL

The days after graduation from an athletic training program are full of celebrations and rewards for a job well done during your schooling. Then comes the reality of job searching (if one isn't already lined up) and practicing the skills you learned.

Once a job is secured, there are professional, legal and ethical pitfalls new athletic trainers can encounter without the proper preparation and guidance. NATA Committee on Professional Ethics (COPE) Chair Paul Rupp, MS, LAT, ATC, and NATA Professional Responsibility in Athletic Training (PRAT) Committee Chair Gretchen Schlabach, PhD, ATC, shared what new ATs need to know to start on the right foot.

Schlabach, who teaches at Florida International University, said that many times, professors don't have time during class to go over everything ATs may face during their professional lives. That can make identifying a situation as a legal, ethical, institutional or regulatory issue more difficult.

"You need to separate them," she said. "Take sexual harassment. That certainly has legal ramifications and it has ethical ramifications, but NATA would look at it from a membership perspective and your employer, state and federal law would all view it from their perspectives."

Schlabach recommends starting with an employer's policies and procedures, then working up through the levels of regulation from the NATA Code of Ethics and Membership Standards to the Board of Certification for the Athletic Trainer (BOC) Standards of Professional Practice to state and federal laws when an issue arises.

"If there seems to be a discrepancy between what the state says and what the BOC says, you need to email your employer and ask how you should act," Schlabach said. "It might not keep

The "Sports Medicine Legal Digest" is © 2024 National Athletic Trainers' Association (NATA). All rights reserved. NATIONAL ATHLETIC TRAINERS' ASSOCIATION, NATA and all other names, logos and icons identifying NATA and its programs, products and services are proprietary trademarks of NATA, and any use of such marks without the express written permission of NATA is strictly prohibited. UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY NATA, THE SPORTS MEDICINE LEGAL DIGEST ("DIGEST") IS PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND MAY INCLUDE ERRORS, OMISSIONS, OR OTHER INACCURACIES. THE INFORMATION

CONTAINED IN THE DIGEST MAY OR MAY NOT REFLECT THE MOST CURRENT LEGAL DEVELOPMENTS OR PRACTICE REQUIREMENTS. YOU ASSUME THE SOLE RISK OF MAKING USE OF THE DIGEST. THE DIGEST IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED TO BE, OR BE A SUBSTITUTE FOR, PROFESSIONAL LEGAL ADVICE FROM AN ATTORNEY OR MEDICAL ADVICE FROM A PHYSICIAN. ALWAYS SEEK THE ADVICE OF A QUALIFIED ATTORNEY FOR LEGAL QUESTIONS AND A PHYSICIAN OR OTHER QUALIFIED HEALTH CARE PROFESSIONAL FOR MEDICAL QUESTIONS. MOREOVER, IN NO EVENT SHALL NATA BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR

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

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

Tips From the NATA Early Professionals' Committee

The NATA Early Professionals' Committee was created to support athletic trainers in the early stages of their career by fostering leadership, developing educational initiatives and promoting professional and ethical values. Several members of the committee shared the things they wished they knew before starting their careers, as it relates to legal and ethical issues. Read on for tips from Chair Emily Mulkey, MS, LAT, ATC, District Six Rep. Kylie Moraes, MAT, LAT, ATC, and District Seven Rep. Hannah Duszynski, MS, LAT, ATC.

Emily Mulkey, MS, LAT, ATC

- Even if PRN work is organized through your employer, their insurance doesn't cover you, so having personal liability insurance is a must.
- Enforce no phones/photos in the athletic training facility. It's important to make sure other patients aren't the ones violating someone else's privacy, since that HIPAA violation comes back to you.
- Know which modalities your state practice act requires additional certifications for, such as myofascial decompression, instrument-assisted soft tissue mobilization, etc.
- Know what your state allows you to diagnose on the field or in the athletic training facility. Some states require the patient to be under a physician's care in order to diagnose.

Kylie Moraes, MAT, LAT, ATC

- Overdocumentation is way better than underdocumentation. Having every encounter logged, little comments made with the date and time, if you emailed/called parents (if working with minors) will give you facts to back you up, if needed.
- If you're severely unhappy at your first job, or they're not doing things you agree with morally/ethically, it's OK to leave. Your first job is not, and likely should not be, your forever job.
- Your state practice act is your bread and butter. Print it, read it, annotate it, keep it easily accessible for reference and stay within it. It's the best way to protect yourself and your license.

Hannah Duszynski, MS, LAT, ATC

- It's so important to understand your state practice act. Each state varies in their requirements for you to practice, documentation you need to provide to become licensed in the state and the standard of care you are expected to uphold.
- Documenting injuries and the care provided to our patient population is simple and easily done through the electronic medical record. However, you should also be documenting comments from parents, issues with your athletics staff, injury communication and lack of communication from outside parties and things your athletes say they had done or said to them by other coaches, teachers, outside health care providers, etc. Get organized, get a system that works for you and document incidents by date, time and summary of what happened. Keep records both digitally and on paper.

you out of hot water, but it does demonstrate to the law or the people who are adjudicating you that you made the effort to find out what it is you need to do legally and ethically."

Echoing Schlabach, Rupp said young ATs will sometimes have a conflict between their morals and the guidelines they're given for practice, which should govern their ethics. He used the example of policies in Virginia that don't allow athletes to return to play until they're cleared to return to learn.

"The science doesn't match the policy," Rupp said. "As a young professional, what are you going to do about that? A lot of new professionals don't think about those kinds of details when they go into a new case, and

now they feel hamstrung [by the policy]. They either push boundaries and get in trouble, or they don't do anything, which hinders the patient. Neither of those are good things. You need to think about what you're going to do before you're in that scenario."

Mentorship is a key part of a new AT's career development, Rupp and Schlabach said.

"Finding mentors is vitally important," Rupp said. "Hopefully, [graduates are] able to keep in touch with the mentors they've accrued through school. ... There should also be a local mentor in your school system or state or district organization."

continued on page 04

Q&A

GENDER EQUITY SUBGROUP DISCUSSES NEW NATA TOOLKIT

The NATA AT Compensation Task Force Gender Equity Subgroup has developed a toolkit to help athletic trainers, especially women, advocate for equitable pay.

Released in March, the toolkit, available at www.nata.org/sites/default/files/genderequitytoolkit.pdf, was highlighted in the April *NATA News*.

To find out more about the NATA Gender Equity Toolkit and take a deeper dive on the gender equity discussion, *Sports Medicine Legal Digest* sat down with the subgroup, comprised of Chair Cari Wood, LAT, ATC, and members Marje Albohm, MS, AT Ret., and Megan Smith, MEd, LAT, ATC.

Q. Why did the NATA AT Compensation Task Force Gender Equity Subgroup think that now was the right time to develop a toolkit that helps all athletic trainers, especially women, advocate for increased, equitable pay?



Marje Albohm, MS, AT Ret.

Marje Albohm, MS, AT Ret.: In reviewing the NATA Salary Surveys, we found that since 2011, women in the profession have seen their salaries rise. But in 2018, women earned, on average, \$8,700 less than

their male counterparts. Then, in 2021, that disparity grew to more than \$11,000. That was our call to action. When we looked into it further, we found that this was a societal issue, not just specific to athletic training. In fact, 61 years after the Equal Pay Act was enacted, women make 82 cents for every dollar men make, and marginalized people make even less. We also found that this inequity was even more prevalent throughout health care, specifically with physicians who are women. That's when we decided that all ATs needed resources to address this issue.

continued on page 04

Q. Many people say they're uncomfortable negotiating their salary. Why do you think women in the profession express particular discomfort about these negotiations?



Cari Wood, LAT, ATC:

While I can't answer for anyone's individual reason for discomfort, I can say that we're trying to minimize this discomfort by offering tons of resources in our toolkit. We believe that if we

can encourage women to enhance their leadership skills using some of the offered resources, their confidence will increase so that they will feel more empowered when they enter into contract negotiations or interviews. The toolkit also has other pointers on the kind of information one can research prior to negotiations to use as ammunition, such as how to prove their worth, show fair market value, compare cost of living, etc. The more information you're armed with, the more confident you will be having these conversations.

Q How much does the gender disparity in AT leadership play a part in the gender pay gap?

Wood: The last research done in this area was the study "Athletic Trainers in Employment Leadership Positions at National Collegiate Athletic Association Division I Institutions" by Lindsey Schroeder EdD, LAT, ATC, published in *The Sports Journal*. It showed that nearly 82% of leadership positions in NCAA Division I schools were held by men. Also, according to the Board of Certification for the Athletic Trainer, in 2021, our profession is more male dominated in terms of administrative roles, even though 57% of athletic trainers are

continued on page 05

PREPARING TO PRACTICE *continued from page 03*

"Get on-the-job training, find a friend you can talk to, but then, find a mentor," Schlabach said. "If anyone called me and shared a situation, I'd be happy to share how they might proceed. I think most athletic trainers are happy to offer a perspective."

New ATs looking for a mentor can sign up for the NATA Mentor Match Program on Gather, gather.nata.org/mentoring, and search for a mentor by work setting, professional interest and more.

Protecting Yourself

Beyond finding a mentor and reviewing relevant policies, one of the first things a new athletic trainer should do after graduation to protect themselves is purchase personal liability insurance. Usually, an employer's policy won't go far enough to protect an athletic trainer from civil lawsuits brought by patients or their families.

"I think we're foolish to believe the employer is going to take care of you if something hits the fan," Schlabach said. "They're not. The employee really needs to take care of themselves."

Schlabach recommends ATs take their policy to their employer's risk manager and ask if the policy meets the employer's needs, if there are any concerns about the policy and what the employer's policy will cover in the event of an issue.

Rupp recommends athletic trainers review the NATA Liability Toolkit, found at www.nata.org/practice-patient-care/risk-liability#liability, with their employers.

"It's quite eye opening for the administrator," Rupp said. "It's going to support the athletic trainer in getting what they need [to practice safely], but it will also help the administrator see that everything is followed."

Finally, Schlabach recommends that ATs learn how to document and keep excellent records, especially about patient interactions.

"Write everything down," she said. "When I was a practicing athletic trainer, if something didn't feel right, I'd [write] myself a note about what I saw – who, what, when, where, why – how I felt, what I was concerned about and why I thought my actions were appropriate at the time."

Again, Schlabach said, this may not protect you from scrutiny, but it can help those investigating see how you were thinking. §

PRAT COLUMN

Navigating Regulations and Laws as a New AT

BY ROD WALTERS, DA, ATC, AND DAVID COHEN, ATC, ESQ., NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Entering the athletic training profession involves navigating a complex landscape of regulations, laws and ethical considerations, along with the challenge of a new work environment. This process requires a thorough understanding of various requirements and considerations to ensure compliance and uphold ethical standards. The following parameters are discussed to provide some reference for the new professional.

1. Regulatory Framework

This framework details the regulatory bodies that oversee athletic training practice, such as the Board of Certification for the Athletic

Trainer and state licensure boards. Athletic trainers need to understand their job description and exactly how it fits in the scope of work and regulatory statutes. Review the educational and certification requirements necessary to practice as an athletic trainer in a new location. It's also important to be familiar with the state practice act to understand the limits it might place on specific job duties.

2. Legal Considerations

These include liability issues, malpractice concerns and legal responsibilities when working with athletes and patients. Athletic trainers should address state-specific laws governing athletic training practice, including

scope of practice and supervision requirements. The concept of sovereign immunity is one such issue athletic trainers should know, particularly when it comes to liability.

Sovereign immunity in health care refers to the legal protection granted to government health care entities, such as public hospitals, clinics or health care providers working in government-run facilities. This immunity typically shields these entities from being sued for medical malpractice or negligence without their consent. Sovereign immunity in health care is based on the premise that government entities providing health care services shouldn't be held financially liable for actions taken while providing essential medical services.

Sovereign immunity in health care can impact patients' ability to seek legal recourse for injuries or malpractice claims that occur within government health care facilities. It's essential for individuals receiving health care services from government entities to understand the limitations and protections offered by sovereign immunity and to be aware of any exceptions or legal pathways available for pursuing claims against government health care providers.

There are generally two forms of sovereign immunity:

- **Absolute immunity:** This provides complete protection to the government and its entities from being sued without their consent. It typically applies to certain core government functions such as national defense or certain judicial actions.
- **Qualified immunity:** This type of immunity offers protection from lawsuits as long as the government entity or official is acting within the scope of their duties. However, if they act in a manner that violates established constitutional rights or statutory law, this protection may be waived.

Sovereign immunity can have implications in various legal matters, including civil lawsuits, contractual disputes and personal injury claims involving government entities. Many governments have waived sovereign immunity in certain circumstances through legislation, allowing individuals to bring claims against the government under specific conditions.

It's important for individuals and entities interacting with governmental bodies to understand the concept of sovereign immunity and its implications to ensure compliance with legal requirements and potential avenues for seeking recourse in case of disputes or grievances involving government actions.

Many athletic trainers elect to purchase additional professional liability insurance for activities outside of their scope of work. It must be understood that additional insurance can generally be sought in the event you're involved in a lawsuit and may actually increase your exposure.

3. Ethical Guidelines

These govern decision-making in athletic training, such as beneficence, nonmaleficence, autonomy and justice. Guidelines related to confidentiality, informed consent and conflicts of interest are relevant to the profession and should be discussed. Athletic trainers should review the NATA Code of Ethics and Membership Standards as a starting point for ethical guidance.

4. Scope of Practice

This clarifies the roles and responsibilities of athletic trainers in different settings, such as schools, sports teams and health care facilities. It's important to stay within the scope of practice and collaborate effectively with other health care professionals. Include appropriate procedures and medical approval as needed. Some states require physician oversight for athletic trainers. For example, in Maryland, licensed athletic trainers need to have an evaluation and treatment protocol with their supervising physician, which must be submitted to and approved by the Maryland Board of Physicians.

6. Professional Development

Continuing education, professional growth and staying updated on changing regulations and best practices in athletic training is vital for the growth of new athletic trainers.

Professional organizations, such as NATA, are valuable for networking, advocacy and ongoing learning.

7. Challenges and Future Trends

Challenges in athletic training include health care reform, insurance issues and emerging technologies. Look to the future for trends that may impact the profession and how athletic trainers can adapt and thrive in a dynamic health care landscape.

By examining the regulatory, legal and ethical aspects of entering the athletic training profession comprehensively, aspiring athletic trainers can gain valuable insights into the requirements, responsibilities and considerations essential for a successful and ethical practice in this field.

Q&A, continued from page 04

women. So, it's not just a compensation gap problem. We need to continue to encourage qualified women to apply for these positions of leadership and ensure that their compensation packages are fair and appropriate to start to close the gaps in both leadership roles and pay.

Q. How do you build a network of advocates to assist women in addressing the gender pay gap?



Megan Smith,
MEd, LAT, ATC

Megan Smith, MEd, LAT, ATC:

This process should be the same process as trying to create a network of mentors to discuss personal and professional development. These mentors should include men and women who are trusted individuals to have candid conversations that will lead to growth. One of the best quotes that comes to mind when thinking of who these individuals may be is, "Surround yourself with people who will say your name in a room full of opportunities."

Q. What resources are in the toolkit to help women in the profession address the pay gap?

Smith: The resources that are in the toolkit are for women to analyze the multitude of benefits that can help supplement their salary and if their current organization offers those benefits.

If a new graduate is searching for their first job and trying to navigate the interview process, it provides multiple questions for women to ask to analyze if the benefits coupled with the salary are what they're looking for in a job.

The toolkit may point out multiple benefits that you're interested in, but

continued on page 06

aren't available to you in your current position. The next steps are for women to advocate and negotiate for those benefits and/or adjusted salary. The toolkit provides a number of negotiation tools and resources to practice and prepare women for the negotiation or renegotiation to ensure that their compensation and benefits are matching their individual needs.

Q. Why aren't the skills developed in motherhood recognized as transferable in the athletic training space?

Smith: Unfortunately, this isn't just a problem within athletic training and is seen at a systemic level in all specialties. It's hard to put a monetary value on the tasks that are required of mothers primarily due to it traditionally being viewed as a woman's "role" or "purpose," so it's expected of women and, therefore, shouldn't be compensated. This mindset has clearly evolved over time, but it's still seen when women decide to stay home and take care of their families, then "re-enter the workforce" – they clearly were working hard during that "gap," the role title just shifts. The "gap" in their résumé resembles endless hardworking qualities that are desired by employers. Women should use this discussion/opportunity to put a value on those skills, try to quantify the value of those skills within the workplace and then advocate for a higher salary/compensation.

Q. The Fair Labor Standards Act and the Equal Pay Act both require equal pay for equal work. Yet, many employers are clearly not in compliance with these statutes. What's the best way for ATs to address this issue?

Albohm: It's essential that you have data to support your grievance. You need

continued on page 07

CASE SUMMARY

Court Declines To Dismiss Case Against AT in Hockey Concussion Suit

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

A suit has been filed by a goalie for a youth hockey team, run by a Michigan high school and a local hockey association. The goalie was involved in two separate collisions during a hockey game at which a single athletic trainer was serving both teams.

At trial, the goalie testified that during the second period, a player from the opposing team struck him in the head with an elbow. He claimed that as a result of this blow to the head, he lost consciousness and fell to the ice.

In his complaint, the goalie alleged that he "remained on the ice – unresponsive – for approximately four minutes." During his deposition, however, the goalie denied any personal knowledge regarding how long he was unconscious. He stated that two spectators watching the game from the stands told him that he was unconscious for four minutes.

After the first collision, the athletic trainer went on the ice to check on the goalie. In his complaint, the goalie alleged that the athletic trainer didn't perform any tests to ascertain his medical condition or, specifically, whether he exhibited any symptoms of a concussion. During his deposition, however, the goalie admitted that the athletic trainer assessed him to determine whether he could continue to play. While the goalie testified that he felt dizzy after the first collision, he admitted that he wanted to remain in the game and that he told the athletic trainer, "I think I'm good."

The athletic trainer told the goalie that if he started to get a headache or feel dizzy or if he felt like he couldn't continue play, he should alert the athletic trainer immediately. The AT later completed a three-page form that documented his evaluation of the goalie. One page labeled "Cognitive & Physical Evaluation,"

included an area for documenting the evaluation of an athlete's symptoms as well as an area for documenting an athlete's cognitive and physical condition. According to the form, the goalie reported a mild headache to the athletic trainer, but this subsided as the evaluation progressed.

The goalie also purportedly reported experiencing mild dizziness when his head hit the ice but denied any dizziness during the on-ice evaluation. The goalie purportedly denied other symptoms of a concussion, including pressure in the head, neck pain, nausea or vomiting, blurred vision, balance problems or sensitivity to light or noise. The athletic trainer recorded on the cognitive-assessment portion of the form that the goalie "knew where he was [and] what happened," and that he was "able to comprehend" and "was not delayed in answering."

The goalie remained in the net, and the game resumed. He testified that, at some later point, he tried to signal the athletic trainer that he wanted to come out.

"I just remember looking at him and, like, shaking my head because I was dizzy, like losing balance," he testified.

He didn't come off the ice on his own, however, because he thought the athletic trainer was going to stop play.

In his complaint, the goalie maintained that shortly after giving up a goal, he remained conscious, but removed himself from the game because his head hurt and he had vision problems. During his deposition, however, he testified that it was his father who "pulled me off the ice" when he "opened the door during the whistle and yelled and told me to come off the ice."

The athletic trainer also wrote on the form that he believed that goalie had suffered a concussion. He marked the goalie's initial treatment as "removed from game" and recommended that he "follow up with physician."

The goalie sued the high school association, hockey association and the athletic trainer. He alleged that the athletic trainer was negligent because he failed to "properly treat and evaluate" his injuries, including "a concussion or concussive symptoms," and because he allowed him "to return to competition after

the first collision.” The goalie further alleged that the athletic trainer was negligent because he failed to remove him from the hockey game “notwithstanding his obvious signs and/or symptoms of sustaining a concussion, specifically the approximately four minutes he remained on the ice.”

At trial, the athletic trainer moved for summary judgment against the goalie’s complaint. In his motion, he asserted that he was certified as an athletic trainer and qualified as a licensed health professional under the Michigan Public Health Code.

The trial court granted summary judgment for the hockey association but denied the motion made by the athletic trainer. The court noted that although the claim is against a medical professional, the allegations don’t require a higher level of medical expertise “beyond the realm of common knowledge and expertise.”

The question, the court said, is not whether the athletic trainer was negligent in his medical treatment, but whether he was negligent in failing to provide medical treatment. A question of material fact exists in the case regarding the actions of the athletic trainer, the court noted.

The parties appealed, and the appeals court noted that the key question in the case was the distinction between ordinary negligence and medical malpractice and the interpretation of the state Concussion Protection Statute. The court concluded that any negligence-based claim must, as its starting point, identify a legal duty owed by the athletic trainer.

“If there is no duty, then there is no negligence,” the court stated.

After reviewing the Concussion-Protection Statute and relevant law, the court concluded that the statute imposes a legal duty on the part of coaches and other covered adults to remove a youth athlete who is suspected of sustaining a concussion from further involvement in covered athletic activities. The statute defines a narrow class of persons needing protection – youth athletes involved in certain athletic activities.

The existence of a legal duty is not, however, the end of the analysis. Contrary to goalie’s position, Michigan law doesn’t “subscribe to the doctrine of negligence per se.” When a plaintiff proves that an actor has violated the terms of a statute, that isn’t conclusive proof of negligence. Rather, Michigan law provides that when a statute imposes a legal duty, violation of that statute creates “a rebuttable presumption of negligence.”

In this case, the court noted, there is a distinction between ordinary negligence and malpractice.

“A medical malpractice claim is sometimes difficult to distinguish from an ordinary negligence claim. But the distinction is often critical,” the court said.

The court noted that the Michigan Supreme Court has provided guidance on how to determine whether a claim is properly brought as a medical-malpractice action. A claim for breach of duty when brought against a health professional who evaluated the youth athlete is based on medical malpractice, the court noted.

The athletic trainer argued that the goalie’s claim is one of medical malpractice rather than ordinary negligence. He further argued that the goalie was required to follow the procedural requirements for filing medical malpractice actions set forth in state law. Because the goalie failed to do so, the athletic trainer argued that the trial court erred in failing to dismiss the claims against him.

The court noted that the trial court stated that the question before it wasn’t whether the athletic trainer was negligent in his medical treatment, but whether he was negligent in failing to provide medical treatment. That is not, however, the proper question, the court stated. It’s undisputed, the court said, that the local health care organization employing the athletic trainer is a “licensed health facility or agency,” the athletic trainer is its employee or agent and, therefore, both are subject to medical malpractice liability, according to the appeals court.

There are no facts in the record to indicate that the athletic trainer evaluated the goalie after he was removed from the hockey game. In fact, the goalie’s claims expressly allege that the athletic trainer should have – but didn’t – remove plaintiff from the hockey game, the court concluded.

Accordingly, the court noted the goalie’s claim against the athletic trainer isn’t based on the duty created in the second sentence of the statute, and the claim isn’t a medical malpractice claim.

“Because we conclude that plaintiff’s claim against [the athletic trainer] sound in ordinary negligence, the trial court properly denied the motion for summary disposition brought by the [athletic trainer] ... even though the trial court did so for the wrong reason,” the court said.

The court thus confirmed the denial of summary disposition filed by the athletic trainer, remanding the case to the trial court. §

Q&A, continued from page 06

to know your fair market value compared to other ATs in your practice setting/geographical area. That’s based on education, years of experience, specific responsibilities, certifications, accomplishments, etc. You can use the many resources that NATA provides. This is all outlined in the toolkit. There are also third-party databases that can be a data source. You need to know all the specific details of your job/job description to make sure you have an exact comparator. The Equal Pay Act requires that women receive equal pay for equal work in jobs that are equal. You need to have a team of allies, including men, to address the inequity together. The biggest fear is retaliation, but when you have a team, you’re not alone! Also, the Equal Pay Act does have a retaliation provision.

Q. Why are job descriptions so important in addressing pay inequities?

Wood: Any small difference in a job description can justify a compensation difference. So, when we’re comparing similar job descriptions in order to evaluate the fairness of the compensations, the descriptions must be the same. Also, when entering a new position, dissect the job description to be sure that you will be getting compensated appropriately for every duty in that description.

Smith: Everyone who is currently working as an AT knows that there is a “clause” within your job description that is “other duties as assigned.” It’s sometimes impossible to include absolutely every role that a job is going to entail and how it may evolve with time, but having a detailed job description of what is going to be expected of the individual for roles and responsibilities helps the applicant to better understand their role and their value within the organization. Not only should jobs normalize posting the roles and responsibilities that are expected for the position, but they should be posting the salary. It’s common for companies to not post the salary for the applicant to

continued on page 08

have a comprehensive understanding of the position and if it's a position they are interested in working. Being vague in job descriptions and/or salaries creates gray areas for role expectations and the value of the AT, which makes it hard to advocate for a higher salary.

Q. Does pay inequity lead to higher turnover rates?

Albohm: I think that's a factor, although, I'm not sure we have specific data to support that. However, in the 2021 salary survey, 71% of the women surveyed indicated that they considered changing careers compared to 62% of men. Job quality, including salary, is a major factor in turnover for both men and women ATs.

Q. What's the role of men in the gender pay equity battle?

Albohm: Throughout my career, I've been mentored by men and we faced everything together as a team. We need that same team approach to this issue. We need to have male advocates for women in the workplace and develop a peer group, including men. One person can't fight this battle alone. One of my most favorite quotes is, "A rising tide raises all ships."

Wood: I agree with Marje. Most of my mentors have also been men, and I trust them to have my best interest at heart. They also want to see women be compensated fairly based on our skills and I know they will support and advocate for us if needed. We need to be a team!

Smith: I also agree with Marje and Cari. I have mentors who are men, who have helped me develop into the athletic trainer I am today. We have discussed how commonly there are more men in leadership positions; these individuals can be pivotal game changers in creating equity in the workplace beyond just gender pay equity. §

LAW 101



Legal Terms Athletic Trainers Should Know, Part IV

In a continuation of this series, LAW 101 breaks down some of the legal issues athletic trainers should know, starting with legal terms.

Part IV 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. Parts I, II and III of this series are found in the Spring 2021, Summer 2021 and Summer 2022 *Sports Medicine Legal Digest*.

Read on for more terms to enhance your legal education.

Compensatory damages: Damages recovered for actual monetary loss. Compensatory damages include items such as money expended for doctors' bills and hospital stays as well as lost wages.

Declaratory judgment: Occurs when a judge determines specific rights or obligations of either party without awarding damages or granting relief. It resolves any legal uncertainties for the litigants.

Demurrer: A formal request for a dismissal to a complaint filed in a lawsuit, essentially saying there's no legal basis for a lawsuit. If a judge grants the demurrer, the claimant has an opportunity to amend the complaint. For example, a lawsuit that addresses the wrong party as the defendant may require the attorney to file a demurrer that asks the court to dismiss the actions because there's no legal standing for the case.

Ex parte hearing: Hearings, motions or orders where only one party is present. *Ex parte* hearings are often reserved for urgent matters where one party may be subject to irreparable harm if notice is given to the other party. For

obvious reasons, temporary restraining order hearings are often conducted *ex parte*.

Malfeasance: Anything done illegally or immorally. For example, an abuse of authority or dishonesty would fall under this term.

Mens rea: This common legal term is Latin for "guilty mind" and is used to describe the criminal intent of the individual when committing a criminal act. If someone is proven to have *mens rea*, it means that they had awareness of their own criminal actions. Determination of *mens rea* is important in cases involving severe mental illness.

Nolo contendere: When a defendant pleads *nolo contendere*, or no contest, it means that they won't contest the charges but, at the same time, don't admit to any guilt. A *nolo contendere* plea means accepting conviction as though a guilty plea has been entered but without admitting guilt.

Prima facie: Refers to what is presumed after the first disclosure. "*Prima facie* case" is, therefore, used to describe a case that is proven by viewing the facts alone without having to discuss any interpretations of the statutory or regulatory law.

Punitive damages: Monetary awards designed specifically to set an example or punish a wrongdoer. For example, a judge may reward punitive damages to a plaintiff if they deem the action of a defendant particularly egregious. Punitive damages are most often awarded in civil cases.

Tort: An illegal act or crime (for example, battery, assault, fraud, theft) that injures someone else, regardless of whether it's intentional or accidental. §

Preventing Ethical Dilemmas for Early Professionals

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

The NATA Committee on Professional Ethics (COPE) has compiled statistics from the NATA Code of Ethics (COE) violation cases dating back to 1994. Those statistics demonstrate that the greatest number of athletic trainers who committed COE violations are part of the youngest group of members (ages 24 to 30), which is also the highest percentage of membership. The statistics also show that the secondary school and college/university settings, which represent the highest percentage of membership by setting, have the highest number of COE violations.

Mark Twain is credited with saying, “There are three kinds of lies: lies, damn lies and statistics.” This would imply that the numbers don’t tell the whole story. If the numbers are true, NATA and AT education programs should focus on supporting early professionals within the membership.

Considering many early professional ATs start out by themselves in the secondary school setting or working with college athletes close to their age, they face a great number of challenges, which can include but are not limited to: a lack of experience handling difficult situations on their own; pressure to return an athlete back to participation too soon; appropriately communicating with parents, athletes, coaches and administration; building relationships within the work setting; social media; and work-life balance. Being self-aware and understanding what one’s weaknesses are within these challenges can help an early professional prepare to practice ethically.

The Conflict of Morals and Ethics

The biggest conflicts occur when our morals don’t line up with our ethics. Put simply: Our morals are what we believe to be right and wrong, and ethics are what society declares what is right and wrong.¹ The societal right and wrong in athletic training come from the COE and the Board of Certification for the Athletic Trainer Standards of Professional Practice.^{2,3} These two documents set the standards on how ATs practice ethically. ATs need to be aware of and understand these two documents.

Consider these examples where morals and ethics might be in conflict.

Due to a schedule change, a game was added on a night you had no events and made plans with your family. Your morals suggest you spend time with family; ethics suggest you be at work. What is the right thing to do? The real question is, what did you do to prepare for this event? Did you communicate ahead of time that you wouldn’t be available for this date? Have you been communicating about potential changes?

Your school board policy states that following a concussion, a student athlete can’t begin any return-to-play progression until they have fully completed their return-to-learn requirements. Science has shown that exercise promotes concussion recovery and that the return-to-learn and return-to play processes should overlap. How do you handle this conflict?

These are the types of conflicts that lead to burnout and ethical violations. To avoid these conflicts, the AT must think ahead and discuss the potential conflicts with their supervisor and have a plan in place to meet everyone’s needs.

Setting Boundaries

Demonstrating and setting boundaries is the first cornerstone to ethical practice. Consistency, in word and actions, is second. Being a lifelong learner is third. Leadership is the fourth cornerstone to ethical practice. ATs are often the first, if not the only, medical professionals their patients have access to. It’s imperative they’re treated ethically with compassion and expertise.

Building appropriate relationships is vital to ethical practice. Having a strong but professional relationship with all stakeholders (patient, parent, administrator, coach, physicians, etc.) helps to support the AT’s decision-making. There must be boundaries set in these relationships that demonstrate the AT’s commitment to ethical practice. The AT must practice what is in the best interest of the patient. It’s vital that the patient (and parent, if appropriate) should be involved in the decision-making process. They need to have the most accurate information about the injury. The patient’s long-term health and well-being

must be the priority over short-term happiness. Everyone wants what is best for the patient. Conflict comes when there is disagreement with what is “best.”

Prioritizing Athlete and Patient Safety

Many ATs deal with ethical conflicts from having to answer to multiple people and attempting to keep them all happy. ATs must work with administrators, patients, coaches, parents and physicians. The AT must work ethically in prioritizing their athletes and patients’ safety and long-term well-being. The AT is often the one who must make the decision to hold them out of activity for their welfare. That decision most often happens at the hardest times.

The NATA COE 1.2 states, “Member’s duty to the patient is the first concern and, therefore, members are obligated to place the well-being and long-term well-being of their patient above other stakeholders.”² There is no qualifier in there, such as “unless it is a playoff game,” “unless there is a scout in the stands” or “unless there is a bonus on the line.” ATs have a duty to protect the patient. This must be done constantly. Over time, as this is demonstrated consistently, the external pressure becomes less because it’s known the AT will do what is right, no matter the circumstance.

The Importance of Mentorship

Mentors are an important resource to prevent ethical dilemmas. Having someone to talk through a situation and how to best handle the situation is valuable for young professional ATs. Please do remember to keep the confidentiality of the patient or people involved in the conflict. The mentee shouldn’t violate the COE while seeking help.

As an early professional, build and maintain relationships with experienced ATs and continue to foster those relationships. NATA and most state associations have mentorship programs. Reach out and find a good mentor within your job setting and location who can be a guide and who you can guide in turn – it should be a two-way relationship. Good rela-

continued on page 10

tionships go both ways in teaching and guiding each other. Continue to learn and share knowledge with each other.

Documentation

Early professionals should have learned how to document during their education process. During the learning process, the athletic training student doesn't have to handle a full day of treatment, injury evaluation and communications on their own. Often, the employer doesn't provide an electronic medical record or one that the AT has previously used. Thus, they're learning on the fly.

Documentation is part of the BOC Standards of Professional Practice, COE and state licensures.^{2,3} Documentation is part of the communication process. Learning how to document and communicate with a coach, parent or admin who is pressuring you to

put a patient back into action before they are ready is paramount to prevent a conflict. It's important not to take these interactions personally. If the AT can remain calm, think strategically and demonstrate why they have taken the stance they have, most times, this conflict can be reduced to a disagreement and a resolution can be made. It's very important to document these interactions, as well. All documentation should be done to demonstrate the decision-making process and show what actions were taken.

Leadership

An individual can be a leader from any position within an organization. To be a leader, one must be humble, curious, compassionate, passionate, loyal and ethical. Humility demonstrates an individual doesn't know everything and is willing to learn.

Curiosity leads us to different answers. Compassion should drive an AT to provide the best care for their patient. Passion for the profession should lead one to be the best AT one can be and help make the profession grow. Loyalty to the employer, patient, patient's family and the profession will help the AT practice ethically. Finally, consistent ethical practice will help minimize the challenges that cause stress burnout and difficult relationships. §

References

1. Merriam - Webster Dictionary <https://www.merriam-webster.com/dictionary/ethic>
2. National Athletic Trainers Association Code of Ethics https://www.nata.org/sites/default/files/nata_code_of_ethics_2022.pdf
3. Board of Certification for the Athletic Trainer <https://bocatc.org/athletic-trainers/maintain-certification/standards-of-professional-practice/standards-of-professional-practice>

CASE SUMMARY

AT Accused of Sexual Misconduct Terminated, Permanently Barred From Practice

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

A head athletic trainer at a university in Florida is out of a job and no longer has a license to practice in the state following a sexual misconduct allegation involving a volleyball player.

The volleyball player, a 23-year-old graduate student, not only played with the university's volleyball team but also served as an assistant coach. The volleyball player/coach accused the head athletic trainer of inappropriately exposing her private area during a one-on-one session to treat a leg injury, according to an investigative report filed with the Florida Department of Health and a local police report.

Following the report filed with the Florida Department of Health and the local police report,

the athletic trainer stopped working for the university, according to a university spokesperson.

"As an early professional, build and maintain relationships with experienced ATs and continue to foster those relationships. NATA and most state associations have mentorship programs."

"Because [the university] takes allegations of sexual assault very seriously, the university took immediate action and suspended [the athletic trainer] upon learning of the complaint," the university's chief communications officer, wrote in a statement. "Thirteen days later, after [the university] conducted an investigation into the complaint, [the athletic trainers'] employment at [the university] terminated."

The athletic trainer voluntarily relinquished their license to practice as an athletic trainer in Florida and agreed to never reapply for licensure as an athletic trainer in the state, according to state records.

"My client's first interest, primary interest, was No. 1, getting [their] license taken away so that [they] couldn't do this to anybody else. She's accomplished that now," the volleyball player's attorney said.

The case is still under review by the state's attorney's office, said the Florida Assistant State Attorney.

The volleyball player's attorney said he is considering taking legal action against the university.

This case is instructive for athletic trainers on several points. First, following the lawsuits against Larry Nassar brought by prominent women Olympians, allegations of sexual misconduct by those licensed to treat sports injuries are going to be treated as they should be: as incredibly serious by all concerned, including employers, universities, licensing boards and the public.

Second, athletic trainers accused of this kind of sexual misconduct while allegedly treating injuries risk multiple potential damages, ranging from suspension to termination, civil lawsuits brought by the aggrieved athlete and punitive action by state licensing boards.

Finally, state regulatory bodies and litigation brought against the athletic trainer are very likely to result in a ban from ever again practicing as an athletic trainer. §