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LEGAL DIGEST

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Collegiate ATs Not Required Mandatory Reporters Under New Title IX Regulations

ATs still uphold ethical responsibility to report; lawyers, ICSM break down the new changes and share NATA resources available to ATs

BY CLAIRE HIGGINS

Until August of this year, Title IX required collegiate athletic trainers to be designated mandatory reporters of sexual misconduct allegations on their campuses, meaning they were designated by the institution to report any instances of sexual harassment or assault to a Title IX coordinator. Under the U.S. Department of Education's Final Rule changes to Title IX regulations in August, athletic trainers are no longer required to be mandatory reporters. However, the passing of the Final Rule doesn't eliminate athletic trainers' ethical responsibility to ensure their patients' health and well-being, nor mean athletic trainers no longer have a duty to report.

Athletic trainers in the collegiate setting should continue to evaluate their ethical, legal and professional obligations to provide the highest standard of care when treating a patient who confided in them about alleged sexual misconduct or abuse in addition to understanding their campus policies stated by Title IX.

"Title IX is just one piece of the puzzle that makes up your reporting obligations, not only from a mandatory perspective, but from a permissible and ethical perspective as well," said attorney Nick Godfrey, who represents NCAA athletic trainers, coaches and administrators in NCAA enforcement and infractions matters and other personal liability claims.

Although the Final Rule doesn't require athletic trainers to be designated as mandatory reporters, their obligations to the health and well-being of their patients aren't impacted by updates to Title IX, and it's still important for ATs to understand how to professionally, legally and ethically report allegations of sexual misconduct on their campuses.

The term "mandatory reporter" is a more commonly used term; however, the appropriate verbiage is responsible employee. A responsible employee, according to the NATA Intercollegiate Council for Sports Medicine, is designated by the institution and must report any instances of sexual assault or sexual harassment to a Title IX coordinator. Some employees can and will be considered "confidential employees" and aren't required to share information, unless the information shared demonstrates that there is an immediate danger to the community or the patient.

ICSM recently released an FAQ document for athletic trainers to reference in understanding the new Title IX regulations. Although the Final Rule eliminates athletic trainers as mandatory reporters, institutions can still appoint ATs to this role, but aren't required to do so. The Mandatory Reporting FAQ document was created to be used as a starting point to answer preliminary questions athletic trainers may have about finding the right Title IX resources on their campuses.

Lynsey Payne, MS, LAT, ATC, ICSM NAIA Committee member, who led the work group that created the FAQ document, said the document should "provide some more direction for athletic trainers and help point them in the right direction of who to be asking these questions."

The Final Rule regulations went into effect Aug. 14 and were created to provide more flexibility for institutions to determine how they address sexual misconduct allegations. The 2,000 pages of regulations were highly politicized and criticized but, overall, were implemented with the goal of eliminating bias toward the accused party in sexual misconduct cases, Godfrey said.

"This is a major topic, and we've seen coaches, athletic trainers, student athletes who have had careers and lives derailed because of allegations of this sort," he said. "It can be life-altering if you're not prepared to respond to these kinds of allegations."

More specifically, part of the stated reason for removing athletic trainers from the list of mandatory reporters, according to Godfrey, was to provide more autonomy to the student or other employee who reports sexual misconduct.

Now, under the Final Rule, institutions can appoint mandatory reporters on their campuses, which may include athletic trainers or another senior member of the sports medicine team, but will often be identified as a Title IX coordinator, who will evaluate the allegations.

"While the legal requirement under Title IX may be gone, there may be other legal requirements [for athletic trainers], and certainly professional and ethical obligations still apply," Godfrey said.

Like all health care professionals, athletic trainers enter into a social contract with the public to assure them they

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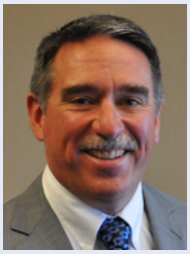
Q&A



DOCUMENTATION WORK GROUP CHAIR DISCUSSES SOCIAL MEDIA BEST PRACTICES FOR ATs

As health care professionals, athletic trainers are expected to adhere to the same standards as other medical professionals when it comes to documentation for the purposes of patient care, communication and ethical and legal requirements. In addition to traditional uses of documentation, social media has become another platform for sharing and distributing content, and understanding the documentation and communication needed before posting about a patient on social media is increasingly important for health care professionals.

Athletic trainers, though, aren't expected to be legal experts, and understanding the ramifications of using social media inappropriately and how to work with legal counsel to ensure appropriate posting on social media is increasingly important.

The NATA Best Practice Guidelines for Athletic Training Documentation includes a section on social media for athletic trainers to reference when HIPAA or FERPA laws might be violated on platforms such as Twitter, Facebook and Instagram.

Charlie Thompson, MS, ATC, head athletic trainer at Princeton University and chair of the work group that developed the guidelines, sat down for a Q&A about what athletic trainers need to know about using social media.

For more information and to view the Best Practice Guidelines for Athletic Training Documentation, visit **www.nata.org/practice-patient-care/risk-liability**.

Q. What are the most common types of social media violations of HIPAA and FERPA requirements?

The two biggest issues regarding HIPAA and FERPA are:

1. Many ATs are not aware of which of the statutes they should be following. Depending on the setting and/or the statute that their employer is following.
2. There are many different interpretations of HIPAA and FERPA, so ATs need to have a definitive plan from their employer's legal counsel.

Remember, HIPAA is concerned with the electronic transfer of medical records. Both HIPAA and FERPA are confused with a general concern with medical confidentiality. There is overlap, but all three are somewhat different.

Q. What are the possible ramifications for the athletic training staff if social media violations of HIPAA and FERPA occur?

If social media violations occur with the AT's knowledge, or they are initiated by the AT, there are significant concerns with the issue of medical confidentiality and the real possibility of legal recourse for the involved athlete.

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Q. What procedures could be implemented to help prevent those violations?

Two important points to consider implementing in your athletic training facility:

1. No cellphones or other technology capable of transmitting images.
2. A strong statement from compliance officers, backed up by legal counsel; strong statement from the coaching staff; and strong statements from the medical staff to all patients and parents regarding their responsibilities in relation to medical confidentiality.

Q. Is there a general consent form that has been developed for patients to sign regarding publication of their image and, if so, where can that from be accessed?

This is something that should come from compliance or the legal counsel. It is not necessarily a medical issue from the administrative standpoint.

Q. What can ATs do to better communicate with patients about the sharing of information from the athletic training facility?

There should be strong, written statements from high up on the administrative ladder addressing the issue of medical confidentiality and the responsibility of each individual. This document should be signed by the patient (and parent/guardian for secondary school athletes) prior to the start of any school year or season.

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NEW TITLE IX REGULATIONS, *continued from page 03*

will provide trustworthy patient-centered care. The AT upholds this social contract by adhering to standards of professional practice, which includes the NATA Code of Ethics in addition to state practice acts and employers codes of conduct. Part of providing the highest standard of care includes the recognition of signs and symptoms of sexual abuse.

NATA's statement on duty to report sexual abuse or misconduct states that "if at any time an athletic trainer suspects that an inappropriate behavior such as sexual abuse is occurring to a patient, it is the duty of the AT to report the perceived actions to the proper authorities. Failure to report any suspicion of sexual abuse to the proper authorities generally will be considered to be a NATA Code of Ethics violation and may also constitute a violation of state and/or federal laws, both of which have serious implications on one's athletic training certification and regulatory status."

At the collegiate level, athletic trainers should balance their professional and ethical responsibilities with those of the new regulation, and should know how to approach allegations or suspected instances of sexual misconduct on their campus.

"There is the NATA Code of Ethics that is in play, but it's for all athletic trainers, not just collegiate athletic trainers," said ICSM Chair Murphy Grant, MS, ATC, PES. "There is really another set of rules that you have to abide by from an ethical standpoint – ATs go to the NATA Code of Ethics, but there are also some things your employer will require you to do."

ICSM's latest resource, the Mandatory Reporting FAQ document, will provide athletic trainers with the right questions to ask on their own campuses to ensure they're prepared, Payne said.

"These situations happen, and we at least want to make sure we are educating [athletic trainers] and arming them with the tools to help themselves on their particular campuses," Grant said.

The FAQ document, available at **www.nata.org/professional-interests/job-settings/college-university/resources**, briefly outlines the new regulations regarding Title IX before defining mandatory reporter, how to find out who specific institutions appoint as mandatory reporters, what happens if ATs don't fulfill their duties as a reporter and how to handle sexual abuse or assault allegations with a patient who is a minor.

Although athletic trainers do still retain their duty to report sexual misconduct based on ethical responsibilities, Godfrey said it's important to remember that athletic trainers shouldn't be the sole adviser on deciding when to report allegations to the institution's Title IX office.

Once an allegation is made or suspected by the athletic trainer, they should be prepared to share available resources with their patients and take the next steps in maintaining their ethical responsibility to report. In these cases, Godfrey said their general advice to clients is to speak in generalities about the allegations with a supervisor or their institution's office of general counsel to determine the best course of action, and who should be contacted to make a formal report before doing so.

"It's very important for athletic trainers to be prepared to discuss resources with the student athlete," he said. "You have to be prepared to be their sounding board, but also advise them appropriately with options that they can take."

Athletic trainers can prepare for these situations by reviewing updates to Title IX regulations and knowing what the landscape looks like for reporting at their institution.

"For specific cases," Payne said, "[the necessary action to take] goes back to the policies at your institution because it is going to be individualized at each institution."

Athletic trainers can also be proactive in finding educational opportunities to learn more about their campus Title IX policies that go beyond what is typically required by connecting with a Title IX coordinator and connecting directly with an athletic director or appropriate supervisor to coordinate a plan for reporting.

To view the Mandatory Reporting FAQ document, visit **www.nata.org/professional-interests/job-settings/college-university/resources**.

Find the NATA Code of Ethics at **www.nata.org/membership/about-membership/member-resources/code-of-ethics**.

To view NATA's statement and recommendations on athletic trainers' duty to report, visit **www.nata.org/practice-patient-care/risk-liability/integrity-in-practice**. This webpage includes information on awareness and signs and symptoms of sexual abuse or assault, but isn't comprehensive in how athletic trainers in the collegiate setting should report suspected abuse or assault on their campuses.

The Final Rule regulations will ultimately have a bigger impact on how universities respond to sexual misconduct allegations, but athletic trainers should be aware of their campus protocol, policies and their own state regulations and ethical obligations to advocate for their patients, such as the NATA Code of Ethics.

COLUMN

Social Media and the Athletic Trainer

BY DAVID S. COHEN, MS, ATC, ESQ.,
NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Social media can be a powerful tool of connection, learning and business development. It can also cause a host of professional responsibility, ethical and legal issues when improperly used. Ignorance is not an excuse for violating laws or the standards of professional ethics. Athletic trainers need to be aware of their legal and professional obligations before opening a social media account and posting.

Social media is defined as websites and applications that facilitate the sharing of information, ideas, pictures, videos and other media through virtual communities. Social media takes many forms, from the well-known and open portals such as Facebook, Twitter, Instagram and LinkedIn to closed communities such as Slack, Telegram and other group messaging apps.

While different social media platforms have different end-user interfaces and focus on different content or themes, their premises are the same: Users create and share content with others and engage in dialogue about the content and often current events.

For the purposes of this column, we will mention several social media platforms including Facebook, Twitter, Instagram and LinkedIn. While the mechanics of each platform may differ, the obligations placed on a licensed and/or certified health care professional, as well as the potential penalties for improper conduct, remain the same across all platforms.

Since 2005, social media use in the United States has grown from 8 percent to 72 percent.[1,2,3] With so many people engaging with each other and brands on social media, it's easy to see the benefits in jumping into the discussion on social media.

The biggest benefit for participating in social media is the opportunity to network with others. For those who work in settings that involve marketing to the public, social media offers a unique venue to do so by posting information of interest to the public and through personal connection with potential patients, if posting as a health care provider. Athletic trainers in all settings can use social media to connect with others who may be able to help them find employment and new opportunities.

Social media provides a way for an athletic trainer to develop their career. In addition to the networking and marketing opportunities, social media can be a way to connect to future employers. Additionally, athletic trainers can take advantage of social media as a way to follow research trends and news since many researchers and thought leaders regularly post new studies, case studies and more on social media. By following and engaging with these thought leaders, an athletic trainer can learn outside of the traditional CEU model, which assists in their development as practitioners, managers and professionals.

Social media also provides an opportunity for an athletic trainer to publish content. By curating articles, sharing them and commenting on them, they can develop a reputation as a thought leader in the profession and their area. Others will look at them as a learned practitioner and seek their guidance on matters. That can open up many opportunities.

While social media has its benefits, there are plenty of potential issues related to improper use. It is important for an athletic trainer to know the pitfalls, such as breaches of confidentiality, unauthorized practice, professional liability and more, so they can avoid them. One major issue, confidentiality, is worth exploring further in this column because of its relevance to many different scenarios involving social media.

As a health care professional, an athletic trainer has a duty to maintain the confidence of their patients. This obligation comes from many sources, including the Health Insurance Portability and Accountability Act (HIPAA), state laws and professional guidelines, such as the NATA Code of Ethics and the Board of Certification Inc. Code of Professional Responsibility.

Failure to follow these rules could lead to discipline including loss of certification, fines and even criminal penalties including jail.

In one case, a physician was sentenced to four months in prison, supervised release and a fine after pleading guilty to accessing medical records without a legally permitted purpose. The 9th Circuit Federal Court of Appeals upheld the denial of the defendant's motion to dismiss based on the fact that HIPAA's criminal penalty applies to an individual who "knowingly and in violation of this part … obtains individually identifiable health information relating to an individual." It is the

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Q&A, *continued from page 04*

Q. Whose responsibility is it to remove prohibited pictures from social media?

ATs should pose this to their administrators and legal counsel. I don't see this as the AT's responsibility, unless they were responsible for the posting.

Q. How can ATs help prevent spectators from posting images and videos that violate protected health information?

The past few years, we have seen the increased usage of medical tents on the sidelines at all levels. This is a great idea for those who can afford it.

ATs should also not make it a practice to perform full medical evaluations on the field and/or on the sidelines. A designated site should be established that would allow for medical confidentiality and a desirable environment for completing the evaluation.

Q. What should an AT do if they find out about a video that violates protected health information and what is the ethical responsibility of ATs when it comes to their posting on social media?

The AT should immediately inform their administrators and then set in motion the prepared plan for handling these types of issues. An AT should never post on social media any information that may involve a patient's medical information. At some point, it may be OK to relate to the patient's story, with their written permission, when they might have overcome impossible odds, etc. The permission process should be a part of the institution's established social media plan.

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Q. If they obtain written consent for that posting, is it OK to then post?

They should refer to their institution or employer's written plan in this regard. ATs are not legal experts and should never put themselves in the position to make legal decisions.

Q. Why is it important for ATs to understand the different social media platforms and to be aware of the consequences of actively posting their patients, to whom they administer care?

It's very easy to get oneself caught in a situation where an understanding of what we are getting involved with is missed because we don't fully understand what we are doing.

Bottom line, don't say anything if it isn't a part of the approved process and permissions haven't been obtained.

The use of blanket permissions for these conversations aren't always allowed. It may be that a new permission needs to be obtained for each incident. Again, refer to your legal counsel and an established plan.

Q. If a patient asks the AT if it's OK to post from inside the athletic training facility on social media, what should the AT say to the patient?

The safest thing is to say "no." The AT may not be able to ensure that other patients don't appear in the posting without their permission, affecting their medical confidentiality.

SOCIAL MEDIA AND THE ATHLETIC TRAINER, *continued from page 05*

action that has to be willful, not the violation. In other words, one needs not desire to violate HIPAA, rather, they just need to intend to access or share medical records without authorization to be subject to criminal penalties, including jail.

Such violations call also be the basis of a lawsuit from the owner of the medical records. An athletic trainer could also lose their job for cause for violations as improper conduct within the scope and course of employment is generally met with discipline. Also, if the athletic trainer's certification is suspended or revoked, they can no longer practice and provide services for their employer. Given that the conduct of employees while working can be imputed on their employer, violations of HIPAA by an athletic trainer can trigger penalties with their employer, thus employers are very motivated to ensure that such violations do not occur.

Athletic trainers need to closely consider what they share on social media regarding their patients. Law Insider defines medical records as "all records and/or documents relating to the treatment of a patient, including, but not limited to, family histories, medical histories, report of clinical findings and diagnosis, laboratory test results, X-rays, reports of examination and/or evaluation and any hospital admission/discharge records which the licensee may have." Photos are included in this definition.

As mentioned, athletic trainers have an obligation to maintain the confidentiality over those records. This includes the obligation to refrain from disclosing such records without a specific, written authorization signed by patient or their parent or guardian. While there is no requirement to obtain "patient consent for uses and disclosures of protected health information for treatment, payment and health care operations," according to the U.S. Department of Health and Human Services, any use outside what is required for to achieve such purposes does require consent.

An athletic trainer who posts information regarding their patients without a written authorization to do so is in violation of HIPAA and many state medical record authorization laws. As gaming becomes more prevalent, information on injuries becomes more valuable as it could affect the outcome of a match and, therefore, its betting lines. Athletic trainers should not directly share any information on their patients outside employer mandated protocols (i.e., the injury report that may be permissible since it is collectively bargained by the player's union and employer or covered by an authorization created by the athlete's employer or school).

Over the past several years, many athletic trainers have created social media accounts where they share pictures and/or videos of injuries. This could be problematic depending on the circumstance.

While showing broadcast footage of an injury is not problematic, some content goes beyond that. Several athletic trainers have documented injuries they treated and then shared it on personal social media through those accounts. Such actions are problematic because they are not likely to be covered in a standard medical record disclosure authorization since such uses aren't a common use of such records. Even if an athletic trainer got specific consent through a proper written authorization, signed by the patient or their guardian/parent, there still may be issues. Consent and authorizations are also improper if obtained through consent or undue pressure. One can argue that the unique relationship between an athlete and athletic trainer, especially at the scholastic and intercollegiate levels, can give rise to a claim that such authorization is improper since the position of the parties relative to the special use wasn't equal.

A few of those accounts claim that sharing the content is "for educational purposes." While HIPAA does permit such uses without authorization, the U.S. Department of Health and Human Services limits the use to "conduct of training programs in which students, trainees or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers."

Such sharing is still a violation of HIPAA since social media is not a "training program;" followers may be members of the public, and there is no way that looking at such content improves clinical skills. Therefore, athletic trainers who take photos and/or videos of their patient's injuries and/or treatment and share them on social media are per se violating HIPAA.

Social media is a medium with a lot of potential opportunities for benefit. However, athletic trainers need to use caution with their use, what they share and how they share to avoid legal, regulatory and professional issue.

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CASE SUMMARY

Court Rules Expert Proof Needed in Alleged AT Malpractice Case

After a high school football player and his family sued a rehabilitation center and an athletic trainer contracted by the school district for allegedly failing to assess the player's symptoms of head trauma, an appeals court ruled the plaintiff must present expert proof from a medical professional to make that claim in a retrial.

During the first quarter of a game, the player violently collided with a teammate. Following the collision, the player wasn't assessed or evaluated for symptoms of concussive brain trauma. The player continued in the game and suffered numerous additional impacts to his head, according to the complaint in the case. During the fourth quarter of the game, according to the complaint, the player appeared on the sideline, dazed, and "suffered numerous brain bleeds as a result of continuing to play football following a concussive brain trauma."

The complaint asserted that "second impact syndrome occurs when the brain swells rapidly and catastrophically as a result of additional blows to the head following a concussive brain trauma."

At trial, the rehabilitation center and athletic trainer argued that the case should be dismissed because the family didn't comply with existing regulations for bringing a malpractice case. The trial court sided with the family on this issue, and the center and athletic trainer appealed the decision.

The appeals court determined it was necessary for the family to attach a certificate from a health care professional when the complaint alleges negligent conduct by a licensed athletic trainer for failing to evaluate an athlete for a concussion following a head trauma suffered while participating in an athletic program.

The court concluded that a determination of whether to assess or evaluate the player following the first-quarter collision requires at least some degree of medical judgment. Considering the defendants' status as licensed athletic trainers, their alleged acts and omissions, and plaintiffs' theory of liability, the court ruled that the complaint is based on healing art malpractice.

The court stated that when a claim is filed alleging healing art malpractice, such as this one, an affidavit from the plaintiff or his attorney must be attached to the complaint. In this case, plaintiffs need to present expert testimony with respect to the applicable standard of care since a determination of those issues is beyond the knowledge of the average lay juror.

The duty to evaluate and treat onsite injuries is vested in athletic trainers licensed by and subject to discipline by the state, the court noted. In the context of the negligence allegations in this case, a determination of the standard of care required of the defendants, including the specialized knowledge and skill involved in carrying out an athletic trainer's duties to assess, evaluate and recognize an athlete's condition, isn't within the grasp of a lay juror, the court decided.

As a result of the ruling, the plaintiffs will need to establish that the defendants failed to employ the degree of knowledge, skill and ability that a reasonable athletic trainer would employ under similar circumstances, but should be given that opportunity by the trial court, the appeals court ruled.

However, the court ruled to require the plaintiffs in this case to file a written report from an athletic trainer with the same class of license as the defendant would be contrary to the plain language in the state statute.

The health professional who reviews the case "need not be someone in the same profession, with the same class of license as the defendant athletic trainer, but instead must be a physician licensed to practice medicine in all its branches," the court stated.

The court remanded the case to the lower court to give the plaintiffs a reasonable opportunity to comply with their ruling in the case.

CASE SUMMARY

Hiring Uncertified ATs Can Lead To Duty of Care Negligence Suit, Court Rules

A lawsuit filed by two student athletes at a junior college in Pennsylvania is addressing the responsibility of uncertified athletic trainers treating injured patients. After two student athletes experienced substantial injuries after treatment from two uncertified athletic trainers, a court ruled that hiring uncertified ATs can lead to negligence.

The two student athletes participated in the first day of spring contact football practice, which involved rigorous tackling drills. While participating in the drills, both athletes suffered substantial injuries.

One player attempted to make a tackle and suffered a T-7 vertebral fracture. He was unable to get up off the ground, and one of the uncertified athletic trainers attended to him before he was transported to the hospital in an ambulance. The other player was injured while attempting to make his first tackle, experiencing a "stinger" in his right shoulder, which involves numbness, tingling and a loss of mobility. The other uncertified athletic trainer attended to that athlete and cleared him to continue practice if he felt better.

Following the injuries, the two student athletes filed a suit against the university, the athletic director and the two uncertified athletic trainers, claiming that the university was negligent in hiring uncertified athletic trainers and that the prospective athletic trainers shouldn't have been treating the two football players.

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At trial, the athletic director testified that she needed to fill two athletic trainer vacancies at the college. She stated that she received applications and interviewed the two prospective athletic trainers but that neither was certified yet. One of them had not yet passed the athletic trainer certification exam administered by the Board of Certification Inc. The other applicant had failed the exam on her first attempt and was awaiting the results of her second attempt and, therefore, also wasn't certified by the BOC.

Despite their lack of certification, the junior college hired both individuals under the assumption that they would serve as certified athletic trainers pending receipt of their exam results. Both individuals signed contracts that included job descriptions for an "athletic trainer." After beginning their employment at the junior college, both individuals learned that they didn't pass the certification exam. The athletic director then retitled the positions held by the two individuals to "first responders" instead of "athletic trainers." However, neither individual actually executed contracts containing the new title.

The trial court dismissed the claims of the injured football players, but an appellate court ruled that the college violated a duty of care toward the athletes.

At trial, the two football players noted that college professors and the clinic supervisor had questioned the lack of qualifications of the new hires at the college.

The trial court dismissed the claims of the injured football players, but an appellate court ruled that the college violated a duty of care toward the athletes. In addition, the appellate court ruled that holding a preinjury waiver signed by student athletes injured while playing football isn't enforceable against claims of negligence, gross negligence and recklessness.

The college, athletic director and the two uncertified athletic trainers appealed this ruling to the state Supreme Court. The court upheld the appellate court's ruling in favor of the athletes on their negligence claim and stated that the trial court was wrong to dismiss the players' claims before it went to trial. The court sent the case back to the trial court for further proceedings.

CASE SUMMARY

Jury Finds AT Not Liable in Concussion Case

In a case demonstrating the importance of communication and documentation, a jury found that an athletic trainer wasn't liable for a football player's injuries when she was unaware that he may have suffered a previous concussion several weeks before collapsing on the field and having to undergo an emergency procedure to save his life.

After consulting with an emergency room physician the day after a football game, the high school football player was diagnosed with a minor closed head injury. The emergency physician completed discharge paperwork that stated the player likely had suffered a concussion and should refrain from playing football until cleared by a physician.

The player continued not to feel well and stayed home from school, but his family sought to have him cleared to play football because the father believed his son was suffering from dehydration, not a concussion. The father told the physician that he saw film of the game and never saw a head-to-head hit that could have produced a concussion.

The physician told the family that they should follow up with another doctor before their son played football because he still wasn't free of concussion symptoms. He said he mentioned the school's return-to-play policy, and that the family shouldn't engage in that process until their son was symptom-free.

Although the physician said he wrote a note to the football coach that stated his recommendation to refrain from any further contact and not return to full-contact practice until the headache subsided, the coach denied receiving the note from the student.

The football coach and the athletic trainer later cleared the player to engage in football activities after the coach administered an ImPACT test. The athletic trainer reviewed the results of the test and told the player that he looked "OK concussion-wise," which led the coach to believe the student could return to play.

The athletic trainer said, however, that language was not meant to clear the student to play, and that she was unaware he was out with a concussion. The ImPACT test administered by the coach was a baseline test, not a post-diagnosis test.

The student returned to practice and played in a game, in which he didn't sustain any big hits yet collapsed on the sidelines after halftime. He was taken to the hospital and had an emergency craniotomy.

The family filed a lawsuit against the coach and athletic trainer, claiming that they verbally "cleared" the student to play in the game. At the jury trial, attorneys for the family claimed that the athletic trainer, who worked for a local health system, should have suspected the student had suffered a concussion when he was tested to ensure his ailments were only symptoms of the flu and that allowing coaches to test the 16-year-old went against her hospital's protocol.

The athletic trainer responded that she was not aware the coach had administered an ImPACT test to "rule out" a concussion until she received a phone call from him after the surgeons had begun the emergency craniotomy to save the student's life. The coach and athletic trainer also noted that they didn't receive a medical note or any information from the student athlete's doctor and didn't clear the student to play the night he collapsed.

The jury's verdict was in favor of the coach and athletic trainer, ruling that the health system, coach and athletic trainer were not liable for the student's injury.

Prepping for the 2021 Legislative Session

What ATs need to get ready to advocate for the profession with local lawmakers

BY DEANNA KUYKENDALL, NATA STATE GOVERNMENT AFFAIRS MANAGER, WITH ADDITIONAL REPORTING BY CLAIRE HIGGINS

Editor's note: This article was originally printed in the November 2020 NATA News.

Many state legislatures will convene after the first of the year, which gives state athletic training associations only a few weeks to adequately prepare their lobbying and advocacy plans before reconnecting with their local legislators. Every new legislative session presents its own unique challenges, and 2021 will not be any different.

While it is difficult to know all the public policy issues the legislature will be taking up in the next cycle, health care is expected to be at the top of the list, providing athletic trainers with a unique opportunity to show their value to the community in a new way, with new proof points to share from working through the COVID-19 pandemic.

The South Carolina Athletic Trainers' Association, specifically, saw success through the work of athletic trainers on interdisciplinary COVID-19 testing teams, said SCATA President Jeremy Searson, PhD, ATC.

"This allowed athletic trainers in the state to provide another service to their communities while advancing the profession of athletic training through educating the population about our roles in health care," he said.

The organization is also now working with the South Carolina Disaster Management Team and the Red Cross to be part of the state's response to various disasters and emergencies.

As part of their 2021 legislative efforts, it's likely the SCATA Government Affairs Committee will utilize the impact and connections made during the pandemic to further work toward their goal of transitioning from certification to licensure statewide Searson said.

The 2021 legislative session will look different from state to state in terms of how they will convene, whether that is virtual, in-person and socially distanced or a hybrid of the two.

Because of the transition to virtual meetings and work during the pandemic, the opportunity to connect with legislators directly has become much easier.

Previously, Searson said a challenge SCATA has faced is securing time with legislators.

"The pandemic, while creating challenges, has opened a number of opportunities for us to engage with our legislature as well as our state leadership," he said.

"As the pandemic has limited access to legislature in the traditional manners, it has also forced them to be more receptive to virtual methods of communication. This has been beneficial in making connections that in the past may have been difficult because of time and location."

The NATA Government Affairs Department provides extensive resources to assist with legislative advocacy in the states. Some of these resources include state practice act consultation, advocacy campaigns utilizing state-of-the-art legislative advocacy software, statutory research, strategies for year-round advocacy, informational webinars, a robust template library with sample resolutions and letters for communicating with elected officials, networking opportunities, numerous guides on best practices and much more.

Late last fall, the NATA Government Affairs Department began hosting legislative boot camps, a two-day, eight-hour course focused on legislative advocacy. As of October 2020, NATA staff has hosted boot camps for nine states, including South Carolina, with three additional planned before the end of the year.

Although many advocacy resources are compiled once the legislature is in session, there are some that can be gathered well in advance and be utilized throughout the year.

Just like in an athletic training facility and AT kit, ATs have a toolbox full of tools that can keep them prepared and ready for any injury or patient need.

The NATA Government Affairs Department put together a list of items for a legislative toolbox that can address multiple legislative advocacy needs. These items can be pulled together now and built upon moving forward:

- Legislative calendar that includes:
  - When the state legislative session convenes and adjourns
  - Bill deadlines
  - Committee meetings
  - Important reminders
- List of legislators that includes:
  - Short biography
  - Addresses for both the district and capitol offices
  - Phone number(s)
  - Email
  - Social media handles
- List of potential coalition members that includes:
  - Mailing and physical address
  - Name, phone and email for their primary contact
  - Notes on how they can help
- List of possible supporters and people who could testify in support of your bill
  - Mailing and physical address
  - Name, phone and email for their primary contact
  - Notes on how they can help
- One-page fact sheet about the athletic training profession that includes:
  - Short paragraph on what an athletic trainer does
  - How many athletic trainers live/work in the state
  - Relevant statistics
  - Contact information (website, primary contact name, phone, email)
- Fact sheet that answers frequently asked questions and can be shared easily with new contacts
- Outlined strategy on how ATs in your state can quickly mobilize in support of legislation

For more information about each state's legislative session and plans for advocacy in 2021, connect with the state government affairs committee or the appropriate NATA Government Affairs Committee district representative. The NATA webpage for state legislative affairs provides resources for members to access and utilize. See what is available at **www.nata.org/advocacy/state**.

The NATA Government Affairs Department is also available to answer questions and provide additional resources to assist members in their advocacy efforts. If you are interested in scheduling a legislative boot camp for your state, reach out to NATA Manager of State Government Affairs Deanna Kuykendall at **deannak@nata.org**.