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LEGAL DIGEST

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REVIEWED BY

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The Ins and Outs of Best Practice, Standard of Care, Policy and Procedure

Understanding each and how they all work together to protect patients and ATs

BY CLAIRE WILLIAMS

"Follow best practice; follow policy and procedure, too! Oh, and make sure you adhere to standard of care!"

What athletic trainers are required to consider before every patient interaction can be overwhelming – but understanding the distinct definitions, differences and collaboration between best practice, standard of care and policies and procedures can simplify the process.

Ultimately, that knowledge, and implementing all three appropriately, can limit the risk of not only harming the patient, but also decrease the athletic trainer's legal risk in the event of a lawsuit or other disciplinary situation.

The relationship between best practice, standard of care and their incorporation into policy and procedure is symbiotic, and should evolve based on new research or new circumstances. Best practice and standard of care should be considered when athletic trainers are organizing patient care and administrative responsibilities into their organization's policies and procedures.

Ericka Zimmerman, EdD, LAT, ATC, co-author of the Board of Certification for the Athletic Trainer's Guiding Principles for AT Policy and Procedure Development resource released in 2016, offers a simple definition for each that are easy to understand, and helpful when developing policies and procedures specific to each organization.

Best practice, she said, is based on peer-reviewed research and establishes optimal care that should be provided during certain situations. Because best practice is based on research, it evolves and can change.

Standard of care, according to Zimmerman, is the level or type of care that a reasonably competent health care professional under similar circumstances would provide. Standard of care won't always align with best practice; it's more dependent on specific circumstances, such as setting, personnel, resources, culture and experience, she said.

Policies are clear expectations for actions often set by the organization that medical staff must follow. The procedures, Zimmerman said, are instructions and guidelines on how to meet the policy.

As a whole, policies and procedures help organization leaders communicate desired outcomes to employees and other individuals; further, they help clarify roles and responsibilities within the organization. Policies should set the foundation for the delivery of safe and effective care.

Because best practices evolve as new research is available, they are not always clearly defined. But, NATA publishes position statements – scientifically based, peer-reviewed research by a team of authors who are experts on the subject – and consensus statements – statements created by an interassociation task force on the best practices of care surrounding an issue – that can be used to determine best practice when athletic trainers are creating, reviewing or revising policies and procedures.

Randy Cohen, DPT, ATC, chair of the former NATA College and University Athletic Trainers' Committee and expert in position and consensus statements and best practices, said standard of care can also be defined by courts during landmark cases.

"A standard is not set by a professional organization," he said. "The standard is set by a court. … The precedent is set because somebody was held responsible by the court that rules an athletic trainer was negligent."

A court's ruling determines whether an athletic trainer handled a situation similarly to how a reasonable medical practitioner would have responded in a similar scenario. So, when the court hasn't ruled on a specific issue, Zimmerman's definition of standard of care allows each organization to set their standard based on their setting, available personnel, resources and experience.

When creating or reviewing policies and procedures, both Zimmerman and Cohen agree they should be written with best practices in mind.

"You always want best practice to align with your policies and procedures – but, you also have to take into account that there are many situations where they can't or won't," Cohen said.

Zimmerman said that's when athletic trainers should fall back on their standard of care.

"Best practices lead to good policies and procedures, but you have to implement policies and procedures based on the resources and personnel available. Standard of care at your institution may not be what we think is the gold star that was published; it may have to be adjusted," she said.

Consider a rural high school that employs one athletic trainer, who is treating a spine-injured athlete. In reviewing the Consensus Recommendations on the Prehospital Care of the Injured Athlete with a Suspected Catastrophic Cervical Spine Injury published in 2020, multiple medical professionals should be involved in removing equipment and spine boarding the patient. With only one AT, following the set recommendations may not be possible. Zimmerman poses the question: "What do you do?"

"You need to have a distinct plan," she said. "There should be a thought-out, discussed [and approved] plan in writing that states, 'This policy and procedure is written as closely as possible to best practices, yet adapted based upon the available resources and personnel to provide the best patient care.'"

Outlining the standard of care in policies and procedures is a critical part of protection for athletic trainers, and a reason they should be included in the drafting, reviewing and revising of their organization's policies and procedures.

"The No. 1 way to protect yourself is by protecting the people you're working for and taking care of your patients," Cohen said.

"The No. 1 way to protect them is by following best practice [as closely as possible], and the No. 1 way to follow best practice is by following policy and procedure that other people sign and agree to."

With optimal patient care at the center of policies and procedures, ATs should be part of the team involved in their creation, which should also include medical providers, medical oversight, administration and legal counsel or risk management, Cohen said.

If current policies and procedures impede appropriate care as determined by the AT, or the administration that approves policies and procedures will not allow the AT to provide care that they believe is appropriate standard of care, then the AT is left with three choices, Cohen said:

- "I won't do it, even though it's standard of care."
- "I'm going to do it anyway and get fired."
- "I'm going to leave this job because it won't allow me to do my job as a health care practitioner."

"None of these options are right or wrong," Cohen said, "But ATs shouldn't have to weigh their options against patient well-being or their own protection."

He said that poorly written policies and procedures not only harm patients by slowing down diagnosis and treatment, but can be harmful to athletic trainers themselves and their coworkers, as well.

The BOC Guiding Principles for the AT Policy and Procedure Development resource serves as a template to guide the development of policies and procedures in a manner that is clear to all the appropriate individuals.

The guide offers sample policies and procedures, in addition to checklists and templates, to

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Q&A

EXPERT DISCUSSES THE ROLE OF ATs IN EAPs

J.C. Andersen, PhD, ATC, PT

Emergencies are inevitable in sports, and often times, athletic trainers are the health care providers first on the scene. That's where an emergency action plan (EAP) comes in.

ATs should be a part of preparing EAPs and reviewing them yearly, ensuring that all involved parties are aware of what to do when the worst happens. So, what are the major components of EAPs, and what are the responsibilities of ATs in helping to executing EAPs?

J.C. Andersen, PhD, ATC, PT, co-author of the landmark NATA Position Statement: Emergency Planning in Athletics (**www.nata.org/sites/default/files/emergencyplanninginathletics.pdf**), published almost 20 years ago, is the expert to ask.

Andersen's insights into EAPs and the liability that comes with them offer an inside look into the importance of emergency planning, and why ATs should know their role based on athletic training best practices and state or local regulations.

Q: Why is it important to have an emergency action plan in athletics?

It's important to help the organization or institution to be prepared to respond effectively in the case of a life- or limb-threatening injury. It's also an important piece of an overall risk management plan for the organization or institution. Finally, it's important as a critical element in the communication strategy to all stakeholders about the importance of emergency preparedness.

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Q. What is the role of an athletic trainer in the EAP?

The AT's role in the EAP has a number of aspects and is most often seen as the individual who implements the EAP and, when needed, activates the venue-specific EAP to care for a stricken individual. In my own experience, the AT is seen as the person responsible for bringing together all of the other parties that are described in the position statement and involve them both in the overall EAP and specific venue EAPs.

Q. What are the basic components of a written EAP?

As we wrote in the NATA position statement, there are eight basic components of an EAP: implementation, personnel, equipment, communication method(s), patient transportation (basic life support, advanced life support, etc.), venue-specific plans, access to emergency care facilities and documentation.

Q. What personnel should be involved in creating and implementing the EAP?

With regard to the overall EAP for the organization, a number of people should be involved in the development, implementation and evaluation of the EAP. At a minimum the AT, the collaborating physician, organization administrators, coaches and local EMS personnel should be involved.

When a venue-specific EAP is implemented and activated, it's important that the personnel at the venue understand the chain of command with and without the AT present and can act accordingly. Specific personnel, other than the AT, would be coaches, game officials, administrators, EMS and possibly physicians. We do need to understand that, in many cases, the AT may not be immediately present to respond, so the other personnel present must be ready to implement the EAP.

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BEST PRACTICE, *continued from page 03*

help assist athletic trainers in developing policies and procedures specific to their organization while complying with local, state and federal laws and regulations. For example, the resource includes checklists that examine employee safety, patient safety, facility management and risk management.

The guide can also be used when reviewing policies and procedures on a yearly basis, Zimmerman said. She recommends conducting a review at least once a year, and the review can be a simple or comprehensive as necessary for the organization. Built into the templates provided in the guide is a recordkeeping function to demonstrate that training and retraining the people who will be following the policies and procedures during review are a part of policy implementation.

When reviewing or drafting new policies and procedures, athletic trainers can access the BOC Guiding Principles for AT Policy and Procedure Development resource, in addition to the NATA Liability Toolkit exclusive to members at **www.nata.org/practice-patient-care/risk-liability**.

ATs should also be aware of position and consensus statements published by NATA that can impact how their policies and procedures are drafted. Those are updated at **www.nata.org/news-publications/pressroom/statements**.

When treating patients, ATs should always consider best practice, standard of care and their own policies and procedures because understanding how they work together symbiotically is important to reduce the risk of harming a patient or athletic training career.

"Ultimately, you shouldn't be practicing to protect yourself," Cohen said.

"You're practicing to protect your patient, so you have to document to show that, if something bad happens, you have the policies in place to address it."

LGBTQ+ Advisory Committee Discusses Employment Discrimination

BY ASHLEY CROSSWAY, DAT, ATC, LORIN CARTWRIGHT, MS, ATC, AND EMMA NYE, DAT, LAT, ATC, NATA LGBTQ+ ADVISORY COMMITTEE

It's imperative to know about federal, state and local laws or regulations that may affect athletic trainers and their patients in the LGBTQIA+ community.

There are a number of laws at all levels that can play a role in the employment of LGBTQIA+ individuals, including the federal Equal Access Act in education, Title IX and prohibited discrimination based on gender or gender identity, if U.S. Department of Education funds are received by the institution. Additionally, Title VII of the 1964 Civil Rights Act prohibits discrimination in employment based upon race, color, religion, sex and national origin.[1] The Title IX and Title VII policies apply solely to public institutions.

It's also important for LGBTQIA+ athletic trainers to understand their potential or current employer's inclusivity of all sexual orientations or gender identities. Private or religious institutions are often exempt from these regulations and may participate in discrimination based on sexual orientation, but others may be inclusive to all.

Before outlining some of the important items to look for when applying for athletic training jobs or working with athletic training students, consider the following story of an out lesbian athletic trainer who was allegedly terminated from her job because of her sexual orientation.

The AT was contracted by a local hospital system to work at a private high school for four and a half years and during this time, she saw an increase in her role and responsibilities. At the beginning of her service to the high school, she was only contracted to provide medical services for competition and certain sports. With time she was contracted to work at the high school full time. In addition to her increased duties as an athletic trainer, she was asked to serve as the assistant softball coach, thus also making her an employee of the high school.

In February 2020, the athletic trainer was asked to a meeting with the school's athletic director and leadership at the high school. During this meeting, a passage from a handbook was read that stated, "We believe that any form of sexual immorality (including adultery, fornication, homosexual behavior, bisexual conduct, bestiality, incest and use of pornography)

is sinful and offensive to God." The athletic trainer was informed that all students, employees and volunteers must agree to respect and act accordingly to the tenants of the handbook. When asked to sign a statement saying she could uphold the tenants of the handbook, she replied, "You know I can't."

She was confused why she was asked to sign the handbook, when she hadn't been asked to sign it during any of the previous four years she was employed with the high school. She had never been asked to sign or abide by this handbook or any other document similar to it.

After refusing to sign, the athletic trainer was immediately removed from her position as the softball coach, but there was uncertainty as to whether she would be allowed to continue working as the athletic trainer at the high school given that she was a contract employee. She was able to continue serving in her role as the athletic trainer for the next month until the school closed due to the COVID-19 pandemic. She remained employed with the hospital, however, and was placed at another school.

During the summer of 2020, the hospital and former employer discussed updating the terms of the previous contract. At that time, the high school requested that a clause be added to the contract regarding signing the school's handbook. The hospital didn't agree with the new clause, and their contract was terminated.

There are no discrimination laws pertaining to public employment in the state where this athletic trainer was practicing. But, the governor and mayors in the state have issued executive orders to protect LGBTQIA+ employees in the public sector since 2001.

Additionally in 2001, the governor issued an executive order to protect employees based on sexual orientation. Another executive order by the governor in 2004 extended protections to gender identity in the public sector.[3] In 2006, the mayor where the AT was employed also issued an executive order protecting city and county employees from discrimination based on sexual orientation.[3]

Then, in 2017, the U.S. Court of Appeals ruled that employment discrimination based on sexual orientation is illegal.[3] The ruling by the court was based on Title VII of the Civil Rights Act, indicating that employment discrimination isn't legal based on sex.[3]

Although the U.S. Supreme Court ruled in June 2020 on employment discrimination based on sexual orientation or gender identity, it ruled separately that federal employment laws don't apply to private religious institutions.

Since the high school that terminated the AT's employment is a private institution that receives no federal funding, the school has the right to set rules that may discriminate against LGBTQIA+ individuals and other protected classes.

Researching Inclusive Employers

Applying for and securing a new job can be quite an extensive undertaking. There are a number of steps involved, from identifying companies that are hiring, updating a résumé, writing a cover letter and securing references, among others. LGBTQIA+ individuals often need to explore a company or institution in greater detail to determine if they are inclusive and accepting.

The first item to look for is the company's nondiscrimination statement. Specifically, look for language that indicates if the company includes only federally protected classes or all people regardless of sexual orientation or gender identity. As previously mentioned, the June 2020 Supreme Court decision now protects LGBTQIA+ employees from employment discrimination; however, it doesn't inherently guarantee an open, accepting and inclusive environment.

Also look for other indicators of diversity and acceptance, such as the mission statement, social media profiles, volunteer opportunities or charitable donations to LGBTQIA+ organizations and preferred names on forms.[4] Furthermore, don't simply trust the company's website and details; instead use external resources, such as the Human Rights Campaign's Corporate Equality Index, Campus Pride Index and other reviews for a nonbiased assessment.[4]

After completing research on various companies or institutions, it's important to continue to investigate if this will be a suitable place of employment during the application and interview process.

Keep in mind the interview is a two-way street.[5] Applicants should have the opportunity to ask their own questions. If offered an in-person interview, use this additional opportunity to determine the overall environment and culture of the organization. Some items to look for or inquire about include gender-inclusive bathrooms; LGBTQIA+ resources, such as diversity training and employee resource groups; and current employee diversity.[3,4] Finally, don't hesitate to ask about health and family benefits including paid family leave, paternal leave, trans inclusion on health care plans, etc.[3,4]

How Employers Can Be More Inclusive

Although some employers may operate in a state that protects LGBTQIA+ workers, it's important to note that an organization's culture may prohibit an employee from feeling comfortable enough to bring their "whole self" to work.

Researchers have found that 46 percent of LGBTQIA+ workers say they are closeted at work.[6] Although best practice is to implement

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Q. Who should develop the equipment strategy?

As we have seen over time, the availability of equipment can vary widely among setting. Therefore, it's critical that the institutional/organizational administrators and the medical team (AT, physician) work together on this strategy. In addition, collaborating with local EMS is important for understanding what equipment and level of care is available.

Q. Who should be responsible for developing the communication strategy and what should be the essential elements?

It is critical that the institutional/organizational administrators and the medical team (AT, physician) work together on this strategy. Essential elements would include determining what methods of communication will be used, i.e., cell phones, walkie-talkies, land lines. It is also important to consider the need for a secondary communication system, if the primary system fails. It is also recommended that a communication tree be developed to facilitate understanding of who is responsible for specific communications, i.e., call 911, call physician, call hospital, etc.

Q. What are the keys to a successful protocol?

There are several keys to success and an important one is ownership of the emergency plan at the organizational/institutional level. What this looks like is the involvement of administrators, the medical team, coaches and others as appropriate for the organization. I also think most of us would agree that rehearsal of the EAP for each venue is an important key to ensure preparedness to respond in an emergency situation.

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Q. What are some of the legal considerations in developing an EAP?

As we established in the position statement, there is a legal need to have a written EAP. Specifically, it is well-understood that organizational medical personnel have a legal duty to provide an accepted standard of care, and this applies to emergency care situations, as well. It's also becoming increasingly clear since publication of the position statement that organizations/institutions are expected to address all aspects of the recommendations to ensure readiness to respond to an emergency. Therefore, documentation of both development, review and updating of the overall plan and each venue-specific plan is critical.

Q. EAPs should be reviewed annually. What factors have changed since you were a co-author on the EAP position statement almost 20 years ago?

Yes, it has been nearly 20 years since we published the position statement. One factor that has changed is improvement in communication tools that the personnel involved may have access to and this should be reflected in any updates to the EAP and the associated venue-specific EAPs. It's also important for us to note that additional position statements published after the emergency planning statement have addressed many emergency situations that should be reflected in the overall EAP document. The annual review should take note of these and incorporate elements of these in the EAP document.

Q. What's the most common mistake made in developing an EAP?

I might suggest two. First, in my mind, is the AT taking on the development of the EAP by themselves and not involving all those who have a stake in EAP development. Another is not realizing that the position statement speaks to two aspects of planning: One aspect is that there should be an overall EAP policy document; second, is that each venue-specific EAP is derived from the overall document.

LGBTQ+ AC ON EMPLOYMENT DISCRIMINATION, *continued from page 05*

anti-discrimination hiring policies, employers should also include sexual orientation, gender identity and gender expression into their anti-harassment policy and harassment prevention training. Including these types of inclusive policies not only ensures the LGBTQIA+ employee is included initially while hiring, but also throughout their time as an employee with the organization.

In addition to creating policies for hiring, employers can also take actionable steps to make their recruiting more inclusive for LGBTQIA+ employees. Statements on inclusivity and respect may be added to job postings on the employer's career page or posting. Employers can reach out to their local LGBTQIA+ organizations, many of which host job fairs and have community job boards for LGBTQIA+ candidates, to actively recruit diverse candidates. Employers can also consider ensuring their interview panel has adequate diverse representation when vetting potential candidates.

In addition to visible postings and active recruitment, employers must put these efforts into practice by following through with the employee's actual job experience. For example, employers should consider internal trainings with current staff and integration of diversity and cultural competence training into professional development opportunities.

In order for employers to meet best practices, they must also ensure their benefit plans serve all potential workers. For example, health benefits should serve everyone, regardless of sexual orientation or gender identity. Life insurance should include same-sex partners, and there should be equal health benefits for transgender employees, without exclusion for medically necessary gender-affirming care.[6]

Inclusivity at the Collegiate Level

When coordinators of clinical education prepare to place an athletic training student at their respective clinical sites, it's important they select an inclusive, welcoming and nondiscriminatory site. Prior to beginning conversations about site agreements, the athletic training program has a responsibility to research any school or organizational policies surrounding equal opportunity.

A survey of medical students indicated that 30 percent of those who identify as a sexual minority don't disclose this information during their coursework or clinical experiences because they fear discrimination.[8] Students fear that disclosing this information may negatively impact their chances of securing a job.[8]

The study also suggests that medical schools collect information regarding LGBTQIA+ students in an effort to improve recruitment processes.[8] This model has potential to be adopted into athletic training programs to not only send a message that being LGBTQIA+ is welcomed in the athletic training community, but also encouraged as a valued contribution to a more diverse profession.

Once the student has begun their clinical rotation, it's also important for preceptors to provide an affirming and supportive environment. Providing a visible indicator that the athletic training facility is a safe space, and encouraging the student to talk openly (if they feel comfortable) regarding their identity creates a safe space, and, ultimately, a safe learning environment to grow their skills as a future clinician.

Federal, state and local laws can play a role in nondiscrimination if the institution receives federal funding. Although private institutions have a right to employee who they choose, even in a contract, it may limit the places of employment for the LGBTQIA+ community.

It's imperative that those in the LGBTQIA+ community utilize resources to determine if an employer would be a good match. It is far better to understand the compatibility of employment prior to accepting a position

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LAW 101

State Practice Acts: How To Read Them and What To Look For

All athletic trainers should be familiar with their state practice acts or laws. In many states, but not all, these laws include definitions of an athletic trainer, licensure requirements and what athletic training actions are governed by state regulatory agencies.

The state statute reflects legislation passed by the state legislature and signed by the governor. State regulatory agencies, part of the executive branch, are charged with interpreting and implementing these laws through guiding documents known as rules and regulations.

It's important to understand that all states, except for California, have a different governing statute that applies to ATs. Additionally, the implementation of even similar laws through regulation, guidance and interpretation also can vary by state.

To assist athletic trainers in their understanding and patient care under state practice acts, this installment of the LAW 101 series will exclusively cover definitions and licensure.

Read the Spring 2022 *Sports Medicine Legal Digest* for a follow-up article that covers regulatory bodies and discipline in regards to state practice acts.

These guides will provide sample language from different states to provide a better understanding of the importance of state practice acts and where to look for key elements in your state's statute. That's ultimately the key takeaway from this special two-part LAW 101 series: Become familiar with ***your*** state practice act.

For more information about state practice acts, visit NATA's interactive map that identifies the athletic training regulatory boards in each state at **members.nata.org/gov/state/regulatory-boards/map.cfm**.

Definitions To Look For

Athletic Trainer

Sample language (Alabama): *An individual licensed by the Alabama Board of Athletic Trainers and under the direction or referral, or both, of a licensed physician after meeting the requirements of this chapter and rules adopted pursuant to this chapter.*

Who ATs Can Treat

Sample language (Colorado): *"Athlete" means a person who, in association with an educational institution, an organized community sports program or event, or a professional, amateur, or recreational organization or sports club, participates in games, sports, recreation, or exercise requiring physical strength, flexibility, range of motion, speed, stamina, or agility.*

What Types of Injuries & Conditions ATs Can Treat

Sample language (Arizona): *"Athletic injury" means an injury sustained by a person as a result of that person's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, or any injury sustained by a person that is of the type that occurs during participation in or preparation for games or sports or participation in recreational activities or physical fitness activities, regardless of the circumstances under which the injury was sustained.*

How ATs Can Treat Patients & Liability

Sample language (New York): *Non-liability of certified athletic trainers for first aid or emergency treatment – notwithstanding any inconsistent provision of any general, special or local law, any certified athletic trainer who voluntarily and without the expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency, outside a hospital, doctor's office or any other place having proper and necessary athletic training equipment, to a person who is unconscious, ill or injured, shall not be liable for damages for injuries alleged to have been sustained by such person or for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid or emergency treatment unless it is established that such injuries were or such death was caused by gross negligence on the part of such athletic trainer.*

Relationship Between AT and Supervisor

Sample language (New Jersey): *"Supervision" means that a physician licensed in this state is accessible to an athletic trainer, either on-site or through voice communication, during athletic training.*

Referral Language

Sample language (Connecticut): *Each person who practices athletic training under standing orders shall make a written or oral referral to a licensed health care provider of any physically active individual who has an athletic injury whose symptoms have not improved for a period of four days from the day of onset, or who has any physical or medical condition that would constitute a medical contraindication for athletic training or that may require evaluation or treatment beyond the scope of athletic training. Each person who practices athletic training, but not under standing orders, may perform initial evaluation, immediate injury management and emergency care of any physically active individual suffering an acute athletic injury or illness and shall, without delay, make a written or oral referral to a licensed health care provider.*

What To Look For About Obtaining and Securing Licensure

Applications & Renewal Qualifications

Sample language (North Carolina): *The board shall issue a license to practice as an athletic trainer to a person who applies on or before Aug. 1, 1998, and furnishes to the Board on a form approved by the Board proof of good moral character, graduation from an accredited four-year college or university in a course of study approved by the Board, and a current certificate from the National Athletic Trainers' Association Board of Certification Inc.*

Grounds for Denial, Suspension or Revocation of License

Sample language (Arkansas): *The Arkansas State Board of Athletic Training may refuse to issue or renew a license or suspend or revoke a license if an applicant has been convicted of a felony or misdemeanor involving moral turpitude, the record of conviction being conclusive evidence if the board determines after investigation that the person has not been sufficiently rehabilitated to warrant the public trust; secured a license by fraud or deceit; violated or conspired to violate this subchapter or rules or regulations issued pursuant to this subchapter. On application, the board may reissue a license to a person whose license has been revoked, but the application may not be made prior to the expiration of a period of one year after the order of revocation has become final.*

Reinstatement Requirements

Sample language (Missouri): *Before restoring to good standing a license, certificate or permit issued under this chapter which has been in a revoked, suspended or inactive state for any cause for more than two years, the board may require the applicant to attend such continuing education*

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courses and pass such examinations as the board may direct.

Temporary Licenses

Sample language (New Mexico): *An applicant for licensure who has passed the New Mexico state law and regulations examination may obtain a provisional permit to engage in the practice of athletic training; provided that the applicant meets all licensure requirements except for passing the national certification exam for athletic trainers. The applicant must provide proof of registration to take the national certification examination. The provisional permit is valid until the results of the national certification examination have been received in the board office. If the applicant should fail or not take the national certification examination, upon proof of re-registration for the national certification examination, the applicant will be issued a second provisional permit. No more than two provisional permits shall be issued to an individual*

Out-of-State Reciprocity

Sample language (Tennessee): *Upon receipt of the initial athletic trainer licensure fee, the board may grant, without examination, a license to any qualified nonresident athletic trainer who holds a valid license or certificate issued by another state and whose qualifications are deemed by the board to be at least equivalent to those required for licensure in this state; provided, that such other state extends the same privilege to qualified athletic trainers who are residents of this state. An out-of-state applicant from a state not having a licensure or certification act will be eligible to take the jurisprudence examination if certified by the NATA Board of Certification Inc., and approved by the board.*

COLUMN

Standing Orders: What ATs Need To Know

BY JAMIE MUSLER, LPD, LAT, ATC, NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

Standing orders, protocols, clinical practice guidelines, standardized procedures, policies and procedures, best practices, action plans – where do you begin?

There is considerable overlap and, in many cases, these terms are used interchangeably. To help clarify, all of these documents have two general functions that are important to the athletic trainer's practice. The first is to establish or authorize the athletic trainer's practice. The second serves to direct the athletic trainer during specific, complex and high-risk clinical or administrative procedures.

Let's focus on standing orders first. The next columns by the NATA Professional Responsibility in Athletic Training Committee will continue to cover additional terms, such as protocols and clinical practice guidelines.

The foundation for all athletic trainers' practice is the legal authority granted in local laws or by professional standards to provide athletic training services. In most states, that authority is directed by a physician or other provider. While language for individual states may vary, the authorization to practice and the establishment of appropriate practice parameters is the responsibility of the athletic trainer and is required by law, Board of Certification for the Athletic Trainer standards and the NATA Code of Ethics. This practice authority is often established with standard orders from the directing physician.

Standing orders are common in all aspects of health care and are recommended by the Agency for Health Care Research and Quality, the federal agency responsible for improving the safety and quality of the health care system. In addition to authorizing the athletic trainer's practice, standing orders improve access to health care, allow for timely initiation of care, expedite decision-making and improve efficiency of the sports medicine team.

Standing orders can take many forms and, in some states, are defined in statutory language or rules and regulations. While local requirements may allow for verbal orders, patient-specific scripting or detailed written direction, standing orders should always be in writing, broad in their scope and signed by both the directing physician and athletic trainer.

Standing orders should be thought of as the foundational direction the supervising physician provides for the athletic trainer's practice. Standing orders should start with a general statement of parameters including the purpose of the standing orders and the practice parameters desired by the directing physician (Example 1).

Standing orders should be general in nature allowing for the discretionary reasoning of the athletic trainer and the diversity of their practice. Standing orders should authorize the appropriate domains of practice, including injury and illness prevention, wellness promotion, examination, assessment and diagnosis, immediate and emergency care, therapeutic interventions and relevant aspects of health care administration.

The standing orders should also reference, but not include or replace other important documents, such as policies and procedures and clinical practice guidelines. Standing orders don't need to be complex and lengthy documents. In most cases, standing orders only need to include a few clear inclusive statements addressing each of the relevant domains of athletic training (Example 2).

It's important to balance the need for the athletic trainer's autonomy of practice with the limitations desired by the physician who accepts the responsibility for the athletic trainer. For this reason, it is vital to have a strong relationship with the directing physician who understands the education and clinical skills of the specific athletic trainer and the broad scope of the athletic trainer's job responsibilities. It's the language in the standing orders that will limit or expand the athletic trainer's practice.

In Example 1, the language limits the athletic trainer's practice to collegiate athletes and employees of the university. This essentially prevents the athletic trainer from treating other individuals. Additional language or new orders would be required if the physician wanted to assume the responsibility for the AT to provide care at camps, high school events, work per diem or volunteer at state games.

While some language can be limiting, standing orders can also be used to specifically include components of the athletic trainer's practice. Most state practice acts are vague and don't establish a clear, well-defined scope of practice. There may be routine or advanced aspects of care that are silent in the language. In general, ambiguity is positive and needed to allow for innovation and growth of a profession. In most cases, the physician has considerable authority and can authorize the athletic trainer to use skills and techniques that may not be included in the state's practice act.

Example 1: Athletic Trainer Authorization To Practice Statement

These standing orders serve as my authorization for [athletic trainer] to practice as an athletic trainer at State University. [Athletic trainer's] patient population may include all individuals participating in collegiate and club sports and other individuals employed by the university.

Example 2: Standing Order Statement for Athletic Training Services

[Athletic trainer] shall use principles, methods and procedures of athletic training to: develop a plan for the treatment, rehabilitation and reconditioning of injuries and illnesses; administer therapeutic and conditioning exercise(s); administer therapeutic modalities; apply braces, splints, and/or assistive devices; provide guidance, counseling and/or educate individuals in the treatment, rehabilitation, and reconditioning of injuries, illnesses and/or conditions; reassess the status of injuries and illnesses to appropriately modify the plan of care, evaluate the readiness for return to a desired level of activity and to make safe return to activity or participation recommendations consistent with his education and skills, the policies and procedures and clinical practice guidelines of state university.

In Example 2, the physician could expand the athletic trainer's use of therapeutic modalities to include dry needling by altering the language in the standing order to include "administer therapeutic modalities, including dry needling." In this example, the supervising physician would be authorizing and accepting the responsibility for the athletic trainer to use the advanced technique of dry needling. This also emphasizes the importance for the standing order to be specific to the skills of each AT.

While it's best for the standing order to be specific to the individual skills of the AT, it's not unusual for standing orders to be written for an entire staff or department, particularly in larger departments with multiple athletic trainers.

It's important to remember that each athletic trainer must be able to demonstrate physician direction for their practice. The establishment of direction should include definitive acceptance of responsibility by the physician for the athletic trainer. This can be done by including the name and credentials for all athletic trainers the physician is directing with the standing orders. The standing order could also include standard language for certain ATs and identify expanded skills for other ATs with advanced training.

In some practice settings, ATs may be receiving patient referrals with a physician prescription. Scripting is common in health care and serves as a directive from a physician or other authorized provider for the services the patient should receive for a specific condition or diagnosis. Prescriptions direct the care the physician deems appropriate; however, a prescription doesn't typically authorize the athletic trainer's practice since it doesn't demonstrate acceptance by the physician for the athletic trainer's actions. This critical, and often legal, requirement can be accomplished with the standing order.

Regardless of the written form, it's important for the document to be identified as standing orders. All standing orders should include a clear authorization and acceptance by the physician for the athletic trainer's practice and limit or support the scope of athletic training services consistent with the education and skill set of the athletic trainer.

CASE SUMMARY

Head Injury Case Illustrates Legal Danger of Not Consulting ATs

A star high school basketball player collided with an opposing player during a home game, causing injury to her head. The athletic trainer wasn't consulted during or after the injury occurred or prior to the next game. The student athlete's injuries and participation in the following game led to collapse and potentially permanent brain damage.

The student athlete sued the school district for negligence.

After the initial collision occurred, the student athlete didn't play the rest of the game. She began to suffer lightheadedness, difficulty with her vision and headaches.

She informed her coach about her symptoms; however, the coach didn't take her to see the athletic trainer for concussion evaluation during the game because she feared they would recommend that she not play in the next game, scheduled for two days later.

After the game, the coach took the player to her mother, who was watching the game, telling her that she had been "bumped around in the game." The student athlete attended school the next day, but had a painful headache that persisted all day. She also couldn't concentrate, felt nauseated and told several friends that she had suffered a concussion.

Her symptoms continued the next day leading up to the team's next game.

Following the school district's policy for away matches, the school's athletic trainer wasn't present at the following game.

During warmups, the student athlete said she had difficulty participating and felt weak. The coaches observed these problems, and the student athlete told them that she had suffered a concussion in the previous game. The coaches told her she was the team's tallest player and needed to remain in the game.

Armed with this information, the coaches set up a signal that allowed the student athlete to indicate she needed to leave the game, putting her in control of her well-being.

After the game, the student athlete collapsed in the locker room, and the athletic trainer of the opposing team gave her a chocolate bar, which she couldn't chew or swallow. One of the coaches asked her if they should call an ambulance for her, but instead they assisted the student athlete in boarding the bus back to school.

The student athlete's mother asked the coach why her daughter had played since she had been under the impression that the prior head injury would prevent her playing.

The coach explained that she had spoken with the other coaches and that her daughter had expressed a desire to play. The coach then told the mother to take her daughter to the hospital. At the hospital, the coach told the mother she "had made the wrong call" in not preventing her daughter from playing.

As a result of treatment being delayed, the student athlete suffered serious brain injuries, missed several months of the school year and incurred extensive medical expenses.

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HEAD INJURY, *continued from page 09*

The student athlete sued the school district and the head and assistant basketball coaches, who filed a motion to dismiss the case. The athlete alleged that the school district and its coaches were in violation of the state's interscholastic athletic association rules and regulations handbook, which requires that a school exclude any athlete who has suffered a serious injury from competition until a doctor pronounces them physically fit.

The bylaws also declare that, for coaches, "striving to win at any cost is distinctly unethical."

In discussing head injuries, the handbook's section on sports medicine advises coaches not to allow athletes who have suffered concussions to return to play until they have fully recovered from their injuries and a doctor has provided permission. The student athlete maintained that the defendants didn't comply with these rules.

According to testimony, because of this improper medical treatment, the student athlete suffered serious brain injuries that caused "potentially permanent health problems." She has been unable to participate in sports and eventually dropped out of college. Her health problems included "serious brain injuries, aggravation of cerebral concussion and permanent sequalae therefrom, blurred vision, loss of balance, headaches and depression."

These injuries led to serious medical expenses, and will continue to do so, the court noted.

The student athlete also claimed that the school district negligently created a danger to students by allowing them to be supervised by the two coaches in dangerous activities, and by failing to institute and enforce safety standards in interscholastic athletics.

The court granted the coaches' motion to dismiss the case, ruling that the student athlete failed to prove facts about the behavior of her coaches that would "shock the conscience."

The court stated, "Plaintiff contends that her coaches had her under their care, knew she probably had a concussion and did not take forceful action to ensure that she received treatment. The coaches also did not prevent plaintiff from acting on her desire to play in a subsequent game, despite their knowledge of her continued physical maladies. She claims that this conduct caused her debilitating injuries. If a jury were to believe these allegations, defendants would be liable to plaintiff for negligence that under this [shocks the conscience] standard, officials will not be held liable for actions that are merely negligent."

However, the court concluded that the conduct of the coaches in this case, in which they failed to prevent a student from exercising her desire to play in a game, doesn't equal that of a coach striking a player with a weapon and causing grave injury. In granting the motion to dismiss, the court ruled "an ill-advised decision to allow a player to participate does not shock the conscience."

The federal district clearly made its ruling on technical legal grounds, issuing this caveat, "The court recognizes that the circumstances that gave rise to this case are tragic. The plaintiff suffered a terrible injury and seeks compensation for the losses she has suffered. Unfortunately, this is a court of limited jurisdiction, and we cannot hear claims – no matter how worthy they may turn out to be – unless they arise under the laws or Constitution of the United States.

"Plaintiff has not stated such a claim, and the relief her experience deserves does not lie with this court. Plaintiff's remedy, therefore, must be found in any claims she may bring in the courts of [the state]."

CASE SUMMARY

Athletic Trainer Receives $95,000 as Settlement for Alleged Discrimination

A female athletic trainer and teacher employed by a school district for more than two decades as an AT for both boys and girls sports didn't have her contract renewed. That decision turned out to more complicated than a simple nonrenewal and led to the discovery of alleged gender discrimination and a $95,000 settlement.

The athletic trainer had discussed the possibility of hiring an athletic training assistant with a school administrator. Soon after, the district not only decided against hiring an assistant, but also didn't renew the supplemental contract of the athletic trainer.

Instead, the school district hired a male athletic trainer, who was employed by an independent health care organization unaffiliated with the school district.

The female athletic trainer then applied to work as an AT for that health care organization and was told she would be hired and again become the head athletic trainer at her former school district. Subsequently, however, the athletic trainer was informed that the school district had expressed "double-dipping" concerns about having a teacher simultaneously serving as a contracted vendor, according to court documents.

After processing this information, the AT then filed two legal actions. One was an administrative complaint filed with the U.S. Equal Employment Opportunity Commission (EEOC), which holds jurisdiction over alleged employment discrimination. The other action was a civil lawsuit filed in federal district court against the school district and the superintendent, alleging sex, age and disability discrimination by the school district.

According to their report, the EEOC investigators found that the person selected to replace the AT and defendant was also simultaneously employed by an independent health care organization and the school district.

The EEOC report stated there was reasonable cause to believe the district had violated the Americans with Disabilities Act, the Age Discrimination Employment Act and state discrimination laws.

The civil lawsuit filed by the AT alleged, among other violations of anti-discrimination laws, that the school district expressed a preference, both orally and in writing, to hire a male athletic trainer to cover boys events, in violation of Title VII of the Civil Rights Act of 1964. The AT's attorney introduced into evidence an email sent by the superintendent that supported this allegation.

The school district decided to offer $95,000 to the AT but, according to court documents filed by the school district, didn'tmake any admission of liability or wrongdoing.