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REVIEWED BY

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Breaking Down the Importance of Licensure

Many parties benefit from the public protection, accountability and credibility licensure provides

BY BETH SITZLER

By definition, an athletic trainer is a “highly qualified, multi-skilled health care professional who renders service or treatment, under the direction of or in collaboration with a physician, in accordance with their education, training and the state’s statutes, rules and regulations.”

So what happens when an individual who hasn’t met the requirements of the profession calls themselves an athletic trainer? What recourse is there for members of the public? How can actual athletic trainers protect their profession as well as patients?

Ultimately, it depends on the state.

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Every state, except California, regulates the athletic training profession – meaning individuals must be legally recognized by the appropriate state regulatory agency prior to practicing athletic training. The ways in which the profession is regulated falls into three categories:

- **Licensure:** Considered the gold standard for health care professions, including athletic training, licensure is a process by which a governmental agency grants permission to an individual to engage in a given occupation after verifying that they have met predetermined and standardized criteria.
- **Certification:** A process by which a practitioner's entry-level knowledge and skills are demonstrated and measured against a defined standard and has received official acknowledgment that they are able to perform the profession's functions and duties.
- **Registration:** A means of demonstrating professionalism.

Because it is the gold standard, NATA advocates for licensure in all 50 states.

"There's more detail with licensure," said NATA Committee on Professional Ethics Chair Suzanne Konz, PhD, ATC, CSCS. "Yes, you get [title] protection with registration, so someone can't call themselves an athletic trainer if they aren't one, and you get some practice autonomy; but by being licensed, there's credibility and accountability that comes with that level of oversight."

Accountability and credibility are major factors that set licensure apart from other forms of regulation and ensures protection of both patients and the profession.

What Licensure Means to Patients, the Profession and ATs

Licensure impacts not only the individual AT, but also the profession and patients.

"That license gives us some autonomy, but also accountability as to how we will conduct ourselves as health care professionals," Konz said.

By defining an AT's scope of practice, licensure lets the public know that the individual has the education, training and skill set needed to practice athletic training.

Licensure not only dictates that athletic trainers practice within their skill set, it keeps them accountable if they don't.

"Licensure protects the patient [by] overseeing the profession and requiring there be a set of standards," said Alabama Board

of Athletic Trainers Chair Chris King, LAT, ATC, who also serves as the District Nine representative on the NATA Government Affairs Committee. He said these standards consider everything from continuing education to the actual practice.

This standard that is set through licensure also benefits the profession. King said licensure influences the perception of the profession and is paramount to ATs' credibility in the eyes of the public and other health care providers.

"Having licensure, having a state regulatory board or some sort of oversight for the protection of the public levels the playing field, to some degree, and shows an understanding that this is a medical profession," he said.

"If you don't have a standard, whoever wants to say they're an athletic trainer gets to."

Konz said she saw this firsthand while conducting her graduate work in Utah, before the state had licensure. She said someone who was claiming to be an athletic trainer was working out of their garage and conducting activities outside the scope of practice for an athletic trainer.

"The state didn't have licensure at that time, so what do you do in that situation? Your hands are tied," she said.

For the individual athletic trainer, licensure outlines what they can do as a health care provider. It also safeguards them if they are ever asked to do something outside of their state practice act or that goes against state regulations.

"Athletic trainers have more protections to be able to hold their athletic administration accountable," Konz said. "That's why the regulatory boards are really the key piece of understanding what the [law] is."

"The NATA Code of Ethics and BOC practice standards are really critical to how we operate as athletic trainers; but the overarching piece, when it comes to licensure, is each of the state regulatory boards. It's important that you're familiar and comfortable with them, and really understand your practice act."

The Role of the Regulatory Board

Once licensure is stipulated in statute, a state regulatory board is charged with overseeing the licensure process.

"A regulatory board's job is to protect the public," King said. "While it does provide the regulation of the licensure and a check-and-balance for who gets licensed, to make sure that they are qualified and have been honest on their documentation and so forth; its main job is to protect the public."

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Q&A

FORMER STATE ASSOCIATION PRESIDENT DISCUSSES THE IMPORTANCE OF LICENSURE



Jim Keller, MA,
LAT, ATC

All but one state in the country regulates the athletic training profession, with licensure being the gold standard, which NATA advocates for in all 50 states. Each state that requires licensure went through a different experience in order to get licensing laws and regulations passed.

In 2019, Jim Keller, MA, LAT, ATC, was president of the Colorado Athletic Trainers' Association (CATA) when the state transitioned the athletic training profession from registration to licensure. Keller shares his perspective on the experience and insight into the process.

Q. For decades, athletic trainers in Colorado were not required to be licensed. Why do you think that was?

Colorado has a history and current legislative culture of being anti-regulation. We had to overcome other allied medical professions, convince Colorado legislation and work with the Department of Regulatory Agencies (DORA) in order to get licensure in the state. Historically, DORA recommended against regulation on seven occasions. In 2019, we were able to pass House Bill 1083 and attain licensure for Colorado athletic trainers.

Q. What was the impetus that led to you leading the effort to persuade Colorado legislators to enact licensing requirement for athletic trainers in 2019?

The CATA board and CATA Government Affairs Committee worked for many years with our lobbyists. CATA's lobbyists, led by

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Suzanne Hamilton, Jerry Johnson and Dan Gebland, presented the challenge to attain licensure in May 2019. No one expected us to attempt licensure two years prior to our sunset review in 2021. Our timing and our teamwork approach were paramount in overcoming the 50-year drought.

Q. What were the challenges and obstacles you faced in getting legislation passed?

The biggest challenge came from DORA. Historically, we had to fight against DORA, the legislature and the governor every time we tried to attain licensure. We decided to make the push in 2019, knowing that we would have to defend it again in 2021 during our sunset review. We decided to fight for licensure and succeeded in 2019 by winning House Bill 1048 and again in 2021, winning Senate Bill 147.

Q. Describe how athletic trainers viewed themselves prior to the enactment of the licensing requirements.

Obviously, athletic trainers have not been licensed in Colorado for 50 years. We have truly been official since Sept. 1, 2021. Due to strong athletic trainers throughout the state at all levels, initially there were not a lot of changes. Colorado athletic trainers have always understood their extensive education, training and experience, and we were frustrated with the state's lack of recognition. CATA moved forward with attaining licensure with the full support of CATA's membership.

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BREAKING DOWN THE IMPORTANCE OF LICENSURE, *continued from page 03*

While each regulatory board is designed to protect the public and patients, how the board is formed and who serves on it is up to the individual state.

"Every state is a little different," King said. "I know in Mississippi, they're part of the Department of Public Health. Then in Ohio, they combined PT, AT and OT into one board."

In Alabama, the board of athletic trainers is composed of 10 members: six athletic trainers elected and appointed by Alabama Athletic Trainers' Association, one of whom is also a licensed physical therapist; three physicians who are appointed by the Medical Association of the State of Alabama; and the ALATA president, who serves ex officio.

"One thing I think is really great about what we've done here in Alabama is that we have very strong oversight by the state's physicians group, and that does afford us even more credibility," King said. "That's one reason why we do have pretty good credibility, especially with our legislature when they realize that it isn't just us and we're not just making up rules just for us. We're making up rules to protect the public, and then we have oversight. This physician oversight grants ATs with stronger political capital for future legislative activities."

While this collaborative oversight illustrates the board's focus on patient protection, just as important is its AT representation.

"You want to have your own sovereignty," King said. "You want to be able to control your own destiny as a profession. I would have to say

that it would be dangerous, in my opinion, for any profession not to have some oversight."

Accountability, Transparency in the Profession

As King and Konz said, accountability is essential to the social contract athletic trainers make with their patients. While every state has their own rules, regulations and procedures when it comes to holding individuals accountable, they all start with reporting.

For those who are licensed, Konz said, reporting should be viewed as a three-pronged approach that includes the state regulatory board, BOC and NATA.

"The first thing to do if someone violates their license is to report it to the state regulatory board," she said.

The BOC should also be notified as, according to its website, "The BOC works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues." For more information on the BOC's disciplinary guidelines and how to file a complaint, visit **bocatc.org/public-protection/standards-discipline/standards-discipline/overview**.

If the person is an NATA member, they should then be reported to the association (**www.nata.org/committee-professional-ethics**).

If the person in question is in a state that regulates the athletic training profession, and they aren't licensed or certified, the process would still begin with the state regulatory board.

Related Resources

- Athletic Training State Regulatory Boards: **www.nata.org/athletic-training-state-regulatory-boards**
- NATA Code of Ethics: **www.nata.org/membership/about-membership/member-resources/code-of-ethics**
- NATA Committee on Ethics: **www.nata.org/committee-professional-ethics**
- NATA Code of Ethics Violation Complaint Form: **www.nata.org/ethics-complaint-form**
- NATA Membership Standards and Sanctions: **www.nata.org/membership/about-membership/member-resources/membership-standards**
- NATA COPE Disciplinary Actions Database: **www.nata.org/cope-disciplinary-actions**
- Athletic Training's Shared Professional Values: **www.nata.org/sites/default/files/prat_5infographichandout-final.pdf**
- BOC Standards of Professional Practice: **bocatc.org/athletic-trainers/maintain-certification/standards-of-professional-practice/standards-of-professional-practice**
- BOC Disciplinary Action Exchange: **bocatc.org/state-regulation/disciplinary-action-exchange**
- BOC Standards & Discipline: **bocatc.org/public-protection/standards-discipline/standards-discipline/overview**

“That goes back to the practice act, and the regulatory board there should send a cease-and-desist letter stating that they are not a licensed athletic trainer and shouldn’t be representing themselves as one,” Konz said.

Unfortunately, for the state that doesn’t regulate the profession, there is no protection against those who falsely claim to be an athletic trainer, unless a law has been broken, which should be reported to the local authorities.

Another facet of the social contract made between ATs and the public is transparency – specifically, how a regulatory board, certification organization or volunteer member organization, such as NATA, is keeping its members accountable and the public and patients protected.

The BOC’s Disciplinary Action Exchange can be used by members of the public to view final BOC disciplinary actions that have been deemed

public as well as disciplinary actions taken by state regulatory agencies.

NATA also offers such a service to members and members of the public: NATA COPE Disciplinary Actions Database (www.nata.org/cope-disciplinary-actions), which contains final NATA disciplinary actions that have been deemed public.

NATA members and members of the public also have access to the NATA Code of Ethics Violation Complaint Form, and are encouraged to use it if they have information regarding allegations of ethical violations.

“Members want action, but they need to be willing to report, whether it’s at the state level, whether it’s the BOC level, whether it’s to NATA,” Konz said. “We rely on members to report and be willing to hold other people accountable to those standards.” §

Q&A, continued from page 04

Q. Did the lack of licensing mandate lead to increased litigation against athletic trainers in your opinion?

No. The benefit will come as we continue working with DORA to improve the ways that institutions, the public and athletic trainers can police the industry. Upon attaining licensure, we improved the methodology to police ourselves for the safety and well-being of athletes and patients in Colorado. Our market is stable, and CATA is part of a large coalition of health care providers striving to maintain that environment.

Q. How did the situation regarding athletic trainers change once the legislation was enacted?

The lobbyists and board instituted five changes to the practice act as of Sept. 1, 2021. Clarity within the act will bring clarity to job descriptions, the health and well-being of athletic trainers and continued efforts to institute job tasks and roles in the future.

Q. Describe the situation regarding the initial sunset requirement and, ultimately, the expiration period now.

We are one of the only states to be granted a 10-year sunset review period. Most often states have seven years, but we are not up for review until Sept. 1, 2031. We see this as a huge win and a window to work on improving our practice act and try and bring it into the 21st century.

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CASE SUMMARY

Tennessee Board Fines Head Athletic Trainer for Repeatedly Employing Unlicensed AT Staff

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

The Tennessee Board of Athletic Trainers has entered into a consent decree with a head athletic trainer at a university who repeatedly employed unlicensed staff members. Under the consent decree, the head athletic trainer was fined a total of \$5,600.

According to the Tennessee Board of Athletic Trainers, the consent decree was necessary because, for the second time in two and a half years, the head athletic trainer had employed athletic trainers without a valid state license.

The board noted that the head athletic trainer was cited for having five unlicensed staff members working as assistant athletic trainers, a charge that the head athletic trainer

admitted. It was the second time the head athletic trainer found themselves in hot water with the state board. Earlier, they were cited for working eight months as an athletic trainer without a state license.

Although the five athletic trainers had been certified by the Board of Certification for the Athletic Trainer, they did not have a Tennessee athletic trainer license.

The head athletic trainer was fined \$200 for each month there was an unlicensed athletic trainer on staff, for a total of \$5,600, and also had to pay costs of the case being prosecuted.

The head athletic trainer was fined \$1,600 for the first incident.

In both cases, the head athletic trainer’s license was placed on probation until the fine was paid.

The university said it was not implicated in the investigation and “has evaluated its policies to ensure that it continues to employ athletic trainers who are authorized to practice in the state of Tennessee and will evaluate the need for any additional internal review and related response.” §

Q. What is your opinion of the current practice guidelines in Colorado and how has that impacted the short- and long-term outlook regarding licensure?

In truth and reality, we are 50 years behind many states. Our current practice act needs to be updated in a well-thought-out manner. Foundational changes need to be made in the verbiage of our practice act prior to acting on larger items, such as third-party billing and functional dry needling.

Q. What have been the impact of the legislation to date?

To be honest, it has been positive to date thus far. However, we know this is only the beginning and we have a lot of work ahead of us in Colorado. Now that Colorado has joined the majority of other states in licensing athletic trainers, we are anticipating being viewed in a positive light, thus drawing additional ATs to our state. We plan to continue to grow CATA and our profession.

Q. Anything else you want to add?

I would like everyone to understand the amount of teamwork within Colorado that led to licensure success in 2019 and 2021. For decades, the failed attempts improved the direction and focus. Many great athletic trainers through the years helped in the battle. The CATA board and GAC are grateful to Hamilton and her team for their expertise in helping us attain licensure in an exceedingly difficult legislative environment. In the end, we endured two hard-fought battles, and benefited from support of health care providers, high profile athletes, high schools, membership and colleges/universities. Licensure is a huge step for all Colorado athletic trainers, but we know we still have a long journey ahead of us. §

Transgender Athletes, Athletic Trainers and the Law

BY SAM JOHNSON, PHD, ATC, CSCS, JAMIE ADAMS, MED, ATC, CES, AND REBECCA LOPEZ, PHD, ATC, FNATA

As more states pass laws related to transgender and gender diverse (TGD) individuals, athletic trainers may find these laws directly impact the health of patients and the care they are able to provide to those patients.

The challenge is these laws may conflict with the NATA Code of Ethics and Athletic Training's Shared Professional Values, BOC Standards of Professional Practice, NATA's six commitments to diversity, equity, inclusion and access as well as a state's athletic training practice act. Therefore, it is essential that ATs recognize how TGD laws may impact the care they provide and be able to describe the potential impact of the laws to their patients.

that would codify the protection of the TGD students under Title IX. Additionally, the Biden administration has said that in the future, it will use a separate rule-making process to clarify how Title IX applies to TGD athlete participation. The Biden administration justified their decision to protect gender identity under Title IX based on a 2020 Supreme Court ruling (*Bostock v. Clayton County*). This ruling found that Title VII, which prevents employment discrimination, includes gender identity. Until the interpretation of federal statutes and regulations are more clearly defined, individual states will pass their own laws.

At the state level, laws related to TGD individuals that may impact ATs generally fall within

“As clinicians, it is important for ATs to understand how these laws and bills that are introduced may impact a patient’s health and well-being.”

Current Laws Regarding TGD Individuals

At the federal level, both Title VII and IX are related to the rights of TGD individuals. Most ATs are likely familiar with Title IX, which prohibits discrimination “on the basis of sex” in educational institutions that receive federal financial assistance. (Most educational institutions that employ ATs must comply with Title IX.)

While Title IX explicitly bars discrimination based on sex, whether the law applies to gender identity is less clear. The Obama administration provided guidance to schools in 2014 and 2016 that Title IX protects TGD students. However, the Trump administration rescinded that guidance in 2017, and in 2020, determined that allowing TGD athletes to participate based on gender identity was a violation of Title IX rights for cisgender females.

In 2021, the Biden administration provided guidance that TGD students are protected by Title IX; and then earlier this year, the Department of Education proposed rules

three categories: 1. athletic participation, 2. curriculum and 3. gender-affirming care. While a full review of each state's law is beyond the scope of this article, several common features of the laws will be highlighted and, in some cases, specific examples provided.

In 2020, Idaho became the first state to restrict TGD athletic participation (HB500: Fairness in Women's Sports). Since then, at least 18 other states have passed similar laws and at least 18 more have had bills with the same goal. (Some of the laws, including Idaho's, are not currently in effect due to lawsuits challenging the laws.) Generally, the laws mandate that sports be designated as “female, women or girls” and participation in those sports are limited to “biological females” based on a “birth certificate at or near the time of birth.”

In most of the states that have passed laws, both K-12 and post-secondary school sports are included with some laws covering intramural and club sports. Finally, most of the laws provide legal protection to schools

that enforce the laws and provide for a cause of action to students, schools and school personnel who are harmed by these laws. For example, if a cisgender female believes she has been deprived of an opportunity or harmed by these laws, she can seek relief through the courts.

At least 20 states have introduced legislation limiting school curriculums. The most high-profile bill was Florida's HB1557: Parental Rights in Education (dubbed by opponents as the "Don't Say LGBTQ+" bill), which passed into law in 2022. Most of the attention focused on the provision in the law preventing instruction on sexual orientation or gender identity "in a manner that is not age-appropriate" (although age-appropriate was not defined in the statute). What garnered less attention was the part of the law that schools must "notify parents of each health care service offered at their student's school and the option to withhold consent or decline any specific service." How this will impact athletic training services at schools in Florida is unclear.

A few states have introduced legislation or passed laws restricting gender-affirming care, which is a process by which a TGD individual better aligns themselves with their gender identity. This can include medical, legal and/or social processes decided by the individual. Gender-affirming care is considered best practice health care by most health care organizations, including NATA. These bills and laws are not as consistent across states as the laws in the previous categories. However, there are several examples that may impact the care ATs provides to their patients. For example, in Alabama, SB184 makes it illegal for a "nurse, counselor, teacher, principal or other administrative official" who knows a minor is questioning their gender identity from encouraging the minor to withhold that from their parents or

Table 1. Common Terms and Abbreviations

Cisgender	When a person's gender identity aligns with their sex assigned at birth.
Gender-Affirming Care	Involves the social, legal and/or medical processes an individual chooses to undergo to better align themselves with their gender identity. This can include gender-affirming hairstyles/clothing, gender pronouns, puberty blockers, hormone therapy and/or gender-affirming surgeries.
Gender Identity	The internal perception of one's gender (i.e., man, woman, nonbinary).
Intersex	Term for a combination of chromosomes, gonads, hormones, internal sex organs and genitals that differs from the two expected patterns of male or female.
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, plus (others)
Sex Assigned at Birth	The chromosomal, hormonal and anatomical characteristics that are used to classify an individual at birth (i.e., male, female, intersex).
TGD	Transgender and gender diverse: An umbrella term/abbreviation used to describe any individual who identifies as transgender or nonbinary, or any other person whose gender identity does not align with their sex assigned at birth.
Transgender	When a person's gender identity does not align with their sex assigned at birth (can include individuals that identify as transgender, nonbinary, genderqueer, agender, etc.).

for that information to be withheld by the school personnel. In Arkansas, HB1570: Save Adolescents from Experimentation Act prohibits a health care professional to refer anyone under 18 years old to a health care professional for gender transition procedures. Again, it is unclear how these laws will impact ATs.

Due to the inconsistency in laws across states and lack of clarity of many of the laws, ATs are in a challenging position. ATs should work with their employers to develop appropriate policies and procedures, state boards of athletic training to guide interpretation of these laws and state athletic training organizations to minimize the impact these laws may have on ATs and patients.

The Impact of Transgender Athlete Laws on Patients

As clinicians, it is important for ATs to understand how these laws and bills that are introduced may impact a patient's health and well-being. Even bills that are introduced but not passed can have deleterious effects on a person's physical and mental health because they perpetuate negative stereotypes. Any bill that intends to either limit an individual's participation in sport or limit their access to health care will have the same

negative impact as any other form of discrimination, regardless of the bill's outcome.

Research has shown that health disparities within the LGBTQIA+ community are caused by a combination of factors, such as cultural and social norms that prioritize heterosexuality and cisgender individuals; minority stress associated with sexual orientation and gender identity; and victimization, discrimination and stigma experienced by LGBTQIA+ individuals.¹ Research on the minority stress theory suggests that individuals who identify as part of a minority or minoritized group often experience stressors that individuals from privileged groups don't.²⁻⁴ TGD individuals experience society differently than even their lesbian, gay and bisexual (LGB) counterparts. TGD individuals are more apt to experience discrimination in their daily lives than LGB individuals, and the discrimination corresponds to increased mental health issues.⁵ TGD individuals often have negative experiences with health care visits resulting in health and health care disparities as well as a disillusion of the health care system. Additionally, discrimination, stigma and victimization

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NATA Resources Available to Members

NATA offers many resources that members can access on the NATA website related to the LGBTQIA+ community (www.nata.org/professional-interests/inclusion) and cultural competence (www.nata.org/practice-patient-care/health-issues/cultural-competence).

can lead to lack of health insurance, delayed medical care, avoiding emergency care and increased prejudice from health care providers.^{1,6}

These stressors often lead to negative psychological, behavioral and physical consequences.² Some of the negative health outcomes may include an increase in stress and mood disorders, depressive symptoms, and anxiety among others.² These stressors and internalized homophobia can often lead to maladaptive coping strategies and participation in unhealthy behaviors, such as disordered eating and substance abuse.² Experiencing discrimination and minority stress on a regular basis has been shown to result in negative physical consequences, such as chronic diseases and negative health outcomes including obesity, hypertension and cardiovascular disease.^{2,4}

These laws, which many medical and health care organizations have deemed discriminatory, will have profound impacts on TGD individuals. Pediatric providers reported that banning TGD athletes from sports participation would cause less access to healthy activities and would increase the risk for unhealthy eating behaviors and weight.⁷ Patients would also be less likely to get medical care for fear of being “outed” or discriminated against by a medical provider. Not participating in organized sports means that patients would no longer be evaluated during a pre-participation physical, which for some youth may be the only access they have to health care.⁷

Overall, medical providers surveyed across all 50 states overwhelmingly opposed bills that prevented TGD patients from participating in the sport that aligns with their gender

Related Resources

- LGBT Map- Sports Participation Bans: www.lgbtmap.org/equality-maps/sports_participation_bans
- LGBT Map- Curricular Laws: www.lgbtmap.org/equality-maps/curricular_laws
- LGBT Map- Health Care Laws and Policies (Youth): www.lgbtmap.org/equality-maps/healthcare_laws_and_policies/youth_medical_care_bans
- NATA LGBTQ+ Advisory Committee: www.nata.org/professional-interests/inclusion
- Trans Athlete: www.transathlete.com
- NATA Code of Ethics and Athletic Training's Shared Professional Values: www.nata.org/membership/about-membership/member-resources/code-of-ethics
- BOC Standards of Professional Practice: bocatc.org/public-protection/standards-discipline/standards-discipline/standards-of-professional-practice
- NATA's DEIA Commitments : www.nata.org/diversity-equity-inclusion-and-access-commitment

identity. There is also an association between gender-affirming care and improved health outcomes.⁸⁻¹² One study found 60% lower odds of depression and 73% lower odds of suicidality in TGD youths receiving gender-affirming care.¹¹ The research is quite clear that denying access to gender-affirming care can have devastating results for TGD individuals, while support for TGD individuals and access to gender-affirming care results in positive outcomes for TGD individuals.⁸⁻¹²

Conclusion

As health care professionals, ATs need to provide the best care possible to all patients and work to eliminate the disparities different patient populations face. It's well established that TGD individuals face significant health disparities, and these anti-TGD state laws will likely exacerbate the problem. ATs must

be cognizant of their own biases that may further propagate these disparities.

ATs must also know the laws governing their practice, including the laws related to TGD patients. These laws are politically charged, and the legal climate is rapidly changing. The laws may put ATs in an ethical dilemma and legal gray area. ATs should reach out to legal counsel with questions regarding TGD policies.

Lastly, as state legislatures begin their sessions, ATs and state athletic training organizations must examine any bill's impact on ATs and their patients. If you have questions about your state organization's advocacy related to TGD bills or laws, contact your state athletic training association's leadership, governmental affairs committee or your district's NATA LGBTQ+ Advisory Committee representative. §

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Regulatory Enforcement: Athletic Trainer Discipline

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While not a comfortable topic, the reality of any licensed profession is there has been and will continue to be a need for discipline. Unfortunately, it does not take an extensive internet search to find significant violations, including multiple felonies, that were alleged to have been committed by athletic trainers. Although the negative publicity of such big cases often makes national headlines, there are far more routine cases of discipline against athletic trainers. While most athletic trainers will never face professional discipline, it is imperative that they understand the complete discipline process and their individual roles and responsibilities related to professional, legal and ethical standards of practice.

Understanding the terminology and procedures used by the different agencies, organizations and entities that regulate and have disciplinary power over athletic trainers is an important foundation. Licensure is regulated by state agencies empowered under state laws. The codification of law through statutes often allows for the creation of additional rules and regulations to provide greater detail and further define the intent of legislation while maintaining the protection of the public.¹

The Board of Certification for the Athletic Trainer (BOC) is a credentialing agency for the athletic trainer that establishes both the standards for the practice of athletic training and the continuing education requirements for BOC-certified athletic trainers. It is important to note that the BOC is not a licensing body as it is not a state agency. State agencies set their own credentialing rules and may have different continuing education requirements to maintain a license than the requirements of the BOC. However, the BOC works with state regulatory agencies to provide credential information, professional conduct guidelines and regulatory standards on certification issues.² Every BOC-certified athletic trainer is obligated to comply with the BOC Standards of Professional Practice, which consists of practice standards and the code of professional responsibility. NATA members are required to abide by the NATA bylaws, policies and procedures, code of ethics, membership standards and other rules and regulations as well as demonstrate compliance.³

There are several ways disciplinary action can be initiated. Direct complaints from the

public are the most common way investigations into the conduct of an athletic trainer start. These complaints can be anonymous or from an identified source, extremely vague or provided from a more formal method such as an affidavit or filing of charges by a court of law.

Many athletic trainers have a legal and/or ethical duty to report a fellow athletic trainer who is in violation of any laws, rules, standards or code of ethics. It is not unusual for an athletic trainer to be hesitant to report a peer if there is not concrete “proof” something is wrong. Keep in mind that an athletic trainer is not a trained investigator and does not have to have all the tools to gather evidence. If it is determined during an investigation that an athletic trainer failed in their duty to report, it is possible disciplinary action could also be taken against that athletic trainer. The more details that are available and the ability for investigators to interview a complainant typically leads to a more thorough investigation.

Regardless, confidentiality and due process are mainstays of investigations. Depending on the severity of the issues, due process will be different. The notification of the accused and involvement of legal counsel for either or both parties, accused and investigative entity, will vary greatly for a failure to respond to a continuing education audit versus a sexual misconduct of a licensed professional with a minor under the athletic trainer’s care. There is potential for temporary action to be taken against a license holder while the investigation and due process continues. Regardless of the merits of the complaint, the authority of the receiving entity to act on the complaint and at the conclusion of the investigation, there should be a formal process, procedure or policy to dispose or close all complaints that are received.

The discipline that can be imposed upon an athletic trainer who engages in misconduct can vary greatly. Some examples are fines, reprimand, additional continuing education, sanctions, voluntary surrender of a license, limited practice, suspension, license revocation, medical and/or mental health evaluation, impairment and/or dependency treatment, or any combination of the previous. Additionally, a regulatory agency could forward their findings

to prosecutors if they believe the misconduct rises to the level of a violation of criminal law.

Unlike a criminal law trial that requires proof beyond a reasonable doubt, many times there only needs to be a “preponderance of evidence” to act against an athletic trainer’s license from a regulatory perspective. A preponderance of evidence means that the facts of the case are such that more than likely the allegation is true. Another way to describe a preponderance of evidence is that there is more than a 50% chance the claim is true.

While the timing of the investigation and type of discipline will vary based on the severity of the violation, the final determination should include the following components: findings of fact, conclusions of law and burden of proof. Agencies will often consider prior sanctions, egregiousness of conduct, cooperation with investigation and remorse of the athletic trainer in determining which sanction to impose. There is typically an opportunity for the athletic trainer to appeal the decision, which may vary by jurisdiction. Sometimes an athletic trainer will sign a consent agreement that sets forth a sanction that both the athletic trainer and investigative entity agree is appropriated based on the facts and severity of violation. A consent agreement does not necessarily indicate the accused has admitted to any wrongdoing, but often does include a statement of admission.

Once formal action is taken against an athletic trainer by NATA, the BOC and/or a state regulatory agency, there is usually a cross informative process. The NATA Committee on Professional Ethics has a webpage for disciplinary action (www.nata.org/cope-disciplinary-actions). The BOC has the Disciplinary Action Exchange (DAE) (at.bocarc.org/disc_actions) was developed to help the BOC, states and consumers locate disciplinary actions in an efficient manner. The BOC encourages all states to participate in DAE as it contains final BOC disciplinary actions that have been deemed public as well as public disciplinary actions taken by state regulatory agencies.⁴ Most state regulatory agencies also have a process for dissemination of formal public action and searchable license

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databases where the status or action history of a license holder can be reviewed. The federal government has the National Practitioner Data Bank (NPDB) (www.npdb.hrsa.gov) under the U.S. Department of Health & Human Services. NPDB is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers and suppliers. Established by Congress in 1986, it is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.⁵

Discipline of athletic training professionals is not something that should be taken lightly.

With properly trained investigators, due process and most often precedent being established, it is imperative that athletic trainers get more comfortable with their professional obligations, especially the duty to report wrongdoing of others. Athletic trainers should also routinely review information from NATA, the BOC and their state regulators to make sure they are compliant with current standards, laws, rules, regulations and code of ethics. Keeping contact information such as email, mailing address and phone numbers up to date also ensures that correspondence is available so potential minor or technical issues do not turn into formal discipline. §

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CASE SUMMARY

Court Rules Against ATs in Case Involving Licensure, Negligence and Immunity

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

A collegiate football player sued two athletic trainers and three coaches for negligence when he suffered neurologic injuries in a football game. The football player argued the athletic trainers exceeded the scope of their license as set forth in the Illinois Athletic Trainers Practice Act.

The football player specifically alleged that the athletic trainers' job was to coordinate his care with the team physician and coaches. This care, the football player asserted, included injury prevention, emergency care and physical reconditioning. According to the football player, the athletic trainers acted independently of the team physician because they neither regularly coordinated with them nor acted under their direction.

The court held that athletic trainers in this case were potentially liable because the state practice act's language that athletic training is a "learned profession" was consistent with definitions of

malpractice. The court defined "malpractice" as an instance of negligence or incompetence on the part of a professional. A "professional" was defined as a member of "a learned profession." A "learned profession" implies the existence of a body of learning relevant to that profession as a whole – the "standard of care."

The state practice act provides disciplinary action for malpractice. It also explicitly states that athletic training is a learned profession. It declares that athletic training "affects the public health, welfare and safety and its regulation and control [are] in the public interest" and "only qualified persons [are] permitted to hold themselves out to the public as athletic trainers in the state of Illinois." Athletic trainers are required to have graduated from both an accredited curriculum in athletic training and a four-year accredited college or university, as well as pass an examination determining one's fitness to practice as an athletic trainer.

The court noted in defining "licensed athletic trainer" that the legislature's language indicated a standard of care. The state practice act, the court said, states that a licensed athletic trainer, under the direction of a physician, "carries out the practice of prevention/emergency care or physical reconditioning of injuries incurred by athletes." It contains a nonexclusive list of specific duties of an athletic trainer, including the

"provision of on-site injury care and evaluation, as well as appropriate transportation, follow-up treatment and rehabilitation as necessary for all injuries sustained by athletes in the program."

The court thus ruled that the state practice act demonstrated the existence of a standard of care for athletic trainers. The court also found that the state practice act established a duty independent of Illinois-based sovereign immunity; this removed immunity provisions that would have otherwise insulated the athletic trainers from liability.

However, the court ruled differently for the coaches. The football player argued that the coaches exceeded the scope of their authority under NCAA guidelines by assuming the role of medical professionals. Unlike the athletic trainers, the coaches were not licensed. The court found that the football player did not establish an independent duty of care for the coaches and sovereign immunity applied. The coaches were simply "off the hook" in this case and no liability attached to them.

The bottom line on licensing in this case: Athletic trainers were not protected by Illinois sovereign immunity provisions because of the statutory language in the state practice act that allowed the court to determine an independent duty of care that could be specifically articulated. §