

Risk Management and Liability Assessment for Athletic Trainers

Strategic Issues in Athletic Training Lecture Series

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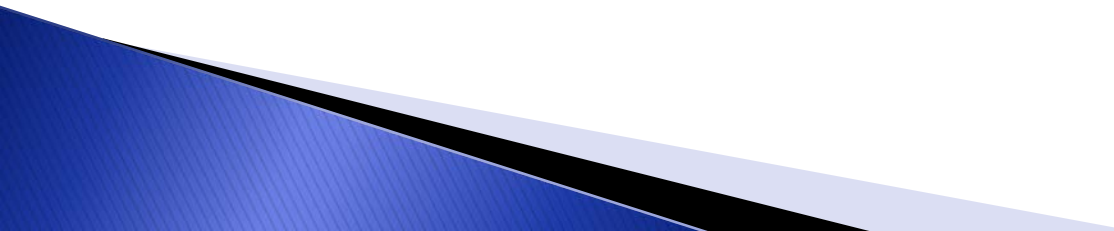


Presenter Conflict

The views expressed in these slides
and the today's discussion are mine

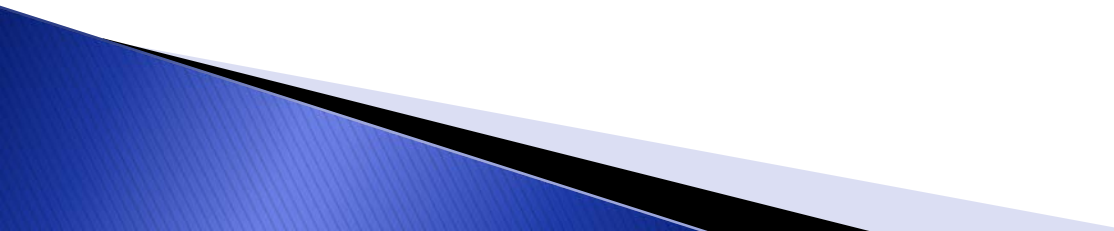
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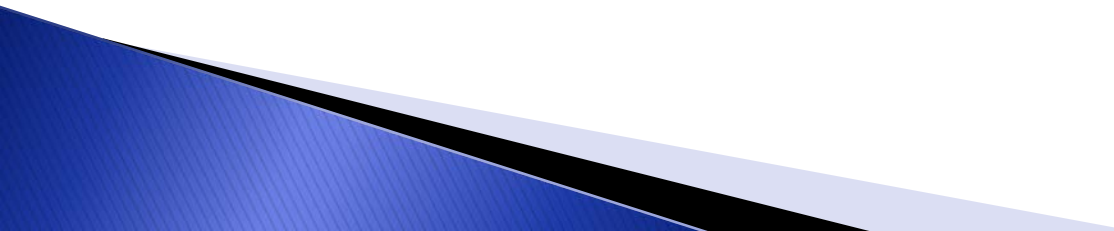


Purpose of Presentation

Traditionally athletic trainers have been insulated from malpractice litigation. As more litigation is occurring primarily with concussion management athletic trainers are being forced to defend themselves. Risk management and understanding liability coverage has not been traditionally taught to ATs as part of entry level education. This presentation is valuable to fill the gap so the AT understands risk management, liability coverage and can determine if there are areas they need to do a better job protecting themselves.



Learning Objectives

- ▶ At the end of this program you will be able to:
 1. Distinguish the difference between protecting yourself from litigation and protecting your state license and how employment status will impact each of these.
 2. Distinguish the medical standards of informed consent and consent to treat and how both apply to the practice of athletic training.
 3. Explain areas of risk for liability and develop strategies to minimize that risk.
- 

We have all dealt with the disgruntled student athlete...



From Pexels



From Getty Images

How are you protected from liability when allegations are made and lawyers come after you?



From The Blue Diamond Gallery

*Not a concussion
issue!*

Not a college issue!

Not a high school Issue!

This is an AT issue!

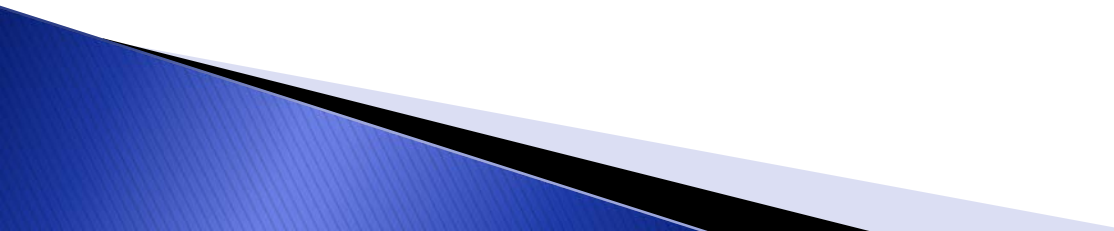


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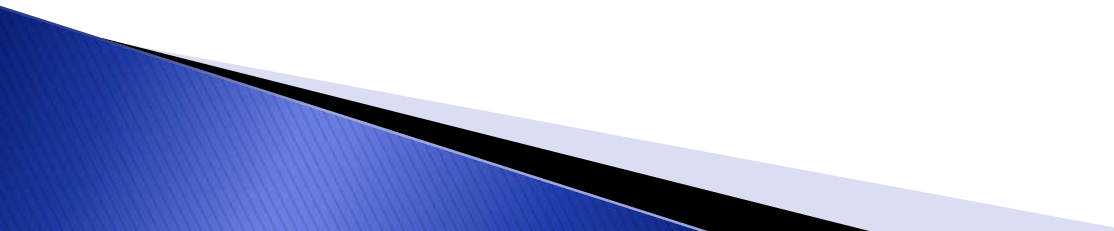
We as a profession are specifically named in
Concussion laws as a medical professional
who can RTP.

NATA Liability & RM Assessment Toolkit

Goal is to gather background information to assist the athletic trainer (AT); the AT's employer, supervisor, risk manager and or legal counsel in assessing the athletic trainers' exposure to risk and liability along with liability coverage for both professional and general negligence.



It is important to have general liability and professional liability coverage/insurance for all aspects of your professional career. As a professional you should review a copy of your insurance plan and be aware of any limitation in coverage that may exist.



General Liability vs. Professional Liability Insurance Coverage

As a visitor was entering the rehabilitation clinic, she caught her shoe on the throw rug and stumbled to the floor resulting in a fractured ulna. The visitor sues the rehabilitation clinic.

Which liability coverage would the clinic need?

A. General Liability

B. Professional Liability

General Liability vs. Professional Liability Insurance Coverage

General Liability Insurance

- ▶ Bodily or personal injury or property damage

Professional Liability Insurance

- ▶ E & O (Errors and Omission)
- ▶ Negligence relative to professional services



Need to assess coverage for all work settings you practice in

- ▶ Amateur/Youth/ Recreational Sports and Leagues
- ▶ AT Educator
- ▶ College University–Clinical
- ▶ Fitness Industry
- ▶ Hospital & Clinical
- ▶ Mass Sporting and Physical Activity Events
- ▶ Military
- ▶ National Governing Bodies & Olympics
- ▶ Occupational Health
- ▶ Performing Arts
- ▶ Physician Extender
- ▶ Professional Sports
- ▶ Public
- ▶ Secondary Schools




From Pixabay

To determine risk need to understand what services are provided to each population

- ▶ Evaluation
- ▶ Treatment
- ▶ Rehabilitation
- ▶ Wellness/conditioning/fitness training
- ▶ Injury Prevention
- ▶ Emergency Care
- ▶ Consultation
- ▶ Medical Recommendation/referral
- ▶ Referral
- ▶ Return to play decisions

How are you employed?

- ▶ Federal Government
 - Sovereign Immunity?
 - ▶ State Government
 - Sovereign Immunity?
 - ▶ Private K-12
 - ▶ Private college for profit
 - ▶ Self-employed
 - ▶ Private for profit business
 - ▶ Private company/Association non profit
 - ▶ Volunteer
 - Good Samaritan Law?
- 

Sovereign Immunity

You work at a state university in Illinois. A player sustained a severe neurologic injury. You are named in a negligence lawsuit.

- ▶ Will the Doctrine of Sovereign Immunity protect you?

Sovereign Immunity

a legal doctrine by which the **sovereign** or state cannot commit a legal wrong and is **immune** from civil suit or criminal prosecution

Case in the State of Illinois. Coach was determined to have Sovereign Immunity but AT did not.

Protection of license is not covered by sovereign immunity



Good Samaritan Law

After leaving work, you stop by the grocery store to pick up some items for dinner. A customer strolling in front of you suddenly collapses.

Are you covered by the Good Samaritan Law?



From Wikimedia Commons

Good Samaritan Law

*You volunteer to cover the Chicago Marathon. All volunteers are given an *au gratis* Chicago Marathon t-shirt.*

On marathon day, a runner goes down. Despite the best emergency medical attention, there is a poor outcome. The family sues the entire emergency medical staff (including you), who attended the runner.

Are you covered by the Good Samaritan Law?

Good Samaritan Law

- ▶ Applies to emergency situations
- ▶ Varies from state to state
- ▶ Intended to protect the layman
- ▶ May be held to a higher standard that is not covered under the Good Samaritan Law
- ▶ Receiving compensation such as t-shirt, free tickets or free parking, could exclude you from falling under Good Samaritan protection
- ▶ **RECOMMENDATION:** Review Your State Law

Need to determine all populations you provide care for

“Secondary School/College”

- ▶ Student athletes that are not of legal age to consent for treatment from your school
- ▶ Student athletes who are of legal age to consent from your school
- ▶ **Student athletes from visiting or other schools that are not of legal age to consent for treatment**
- ▶ Student athletes from visiting or other schools that are legal age to consent to treatment
- ▶ **Coaches or other employees from your school**
- ▶ Visiting coaches or staff members from other schools
- ▶ Family of coaches or staff members
- ▶ Referees/Officials
- ▶ **Former student athletes**
- ▶ Anyone who has access to your facility
- ▶ **Fans or People in attendance**
- ▶ Intramural participants from your school that are not of legal age to consent for treatment
- ▶ Intramural participants from your school that are legal age to consent
- ▶ Intramural participants from outside student body that are not of legal age to consent for treatment
- ▶ Intramural participants from outside student body that are legal age to consent
- ▶ Club sport participants from other schools that are not of legal age to consent for treatment
- ▶ Club sport participants from other schools that are legal age to consent
- ▶ General student population

A State AT license could be revoked or suspended for violating the practice act or conviction for criminal act. Having your license suspended or revoked, working outside your scope of practice or conviction for criminal act could void general liability or professional liability coverage. It is vital that an AT follow their state practice act.

Practice Act/Scope of Practice

1. Do you follow your state practice act in all aspects of your job and in all services that you provide?
 - a. Does your state practice act permit your full scope of employment or independent practice?
 - b. Do you follow your state practice act for all the populations you listed above?
 - c. Do you follow your state practice act for all AT services you provide?
 - d. Do you follow your state practice act for all medical conditions that you provide treatment or care?
2. Including example for return to play.
Example is does your practice act allow RTP with illnesses.

Practice Act/ Scope of Practice

3. Do you have legal consent to treat (as defined by your state practice act or legal provisions in your state) all populations you listed above? Note that consent to treat minors is an area of special concern especially when they are not in your normal patient population (i.e.) care provided for visiting teams or non-athlete students of the institution which employs you.
4. Do you work under the direction of a designated physician/medical director as defined in your state practice act and/or BOC Standards ?
5. Do you have a written agreement with your directing/designated physician concerning your patient population, the scope of services that you will provide and under what circumstances you will be providing care as required by state practice act and/or BOC Standard?
6. Does your contractual or written agreement with your directing/designated physician follow all standards of the BOC and/or State Practice Act?

AT-Physician Written Agreement that follow Arizona Statute

Athletic Trainer-Physician Written Agreement

This written agreement is in compliance with the State of Arizona Statute Title 32, Chapter 41, Article 1 (32-4101, 32-4103).

- (1) An athletic trainer shall refer a person with an athletic injury or athletic illness to one or more appropriate health care practitioners if the athletic trainer has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of athletic training or if athletic training is contraindicated (32-4151).
- (2) The Athletic Trainer will obtain consent to treat as required by Arizona State Statute for all patients except in emergency situation where waiting on consent could be detrimental to the patient's health or potentially to the patient's life.
- (3) A copy of this agreement shall be maintained by the athletic trainer at all times. This agreement may be saved electronically.
- (4) This agreement will be updated yearly or in the event the supervising physician changes.

Summary of Scope of Practice

1. Planning, administering, evaluating, and modifying methods for prevention and risk management of athletic injuries and athletic illnesses including prophylactic taping.
2. Taking a medical history when necessary for evaluation of an injury or illness sustained while individual's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities including: previous medical history, previous surgical history, pertinent family medical history, current medication history including known drug allergies, relevant social history, chief medical complaint, and history of the present injury or illness for which the individual to be treated is seeking evaluation and treatment.
3. Evaluation and management of the injury or illness sustained while participating in physical activity utilizing any of the following procedures: general observation, palpation, motion assessment, muscle strength tests, endurance tests, neurological assessment, joint play assessment, functional evaluation, objective physical measurement, circulatory assessment; general medical assessment including but not limited to blood pressure, pulse, temperature, and oxygen saturation; concussion assessment including but not limited to neurological assessment, balance assessment, neurocognitive assessment and visual field assessment.
4. Utilizing appropriate treatment procedures to treat the injury or illness sustained while individual's participation in or preparation for games or sports or participation in recreational activities or physical fitness activities.
5. Provide emergency care
6. Provide first aid including but not limited to wound care.
7. Managing, rehabilitating and physically reconditioning injuries or illnesses that impede or prevent an individual from returning to participation in games or sports or participation in recreational activities or physical fitness activities
8. Administer medication as per specified protocols approved by physician including asthma management, anaphylaxis (epi-pen), and diabetic management.
9. Clear individual to return to full or partial activity as individual progresses

Athletic Trainer

Name _____
AZ License No. _____
Signature _____ Date _____

Physician

Name _____
AZ License No. _____
Signature _____ Date _____

Physician

Name _____
AZ License No. _____
Signature _____ Date _____

Traveling as part of your job responsibilities

1. Is traveling as an AT written in your job description?
2. Are you within the scope of practice for all states in which you are providing athletic training services?
3. If you have sovereign immunity is it still in effect if you are practicing outside the state you are licensed? **This may not be able to be answered**
4. If you are practicing outside the state you are licensed or legally able to practice (*this can be eliminated if California gets licensure*) and it has been determined that you are practicing without a license by a state board would that void your professional liability insurance or coverage by your employer? **This may not be able to be answered**
5. Does your professional liability coverage expand to cover you if you travel outside the US and provide care?

SUPPORT FEDERAL LEGISLATURE "H. R. 921 / S.689: Sports Medicine Licensure Clarity Act" TO ALLOW AT & PHYSICIAN TRAVELING TO PROVIDE CARE

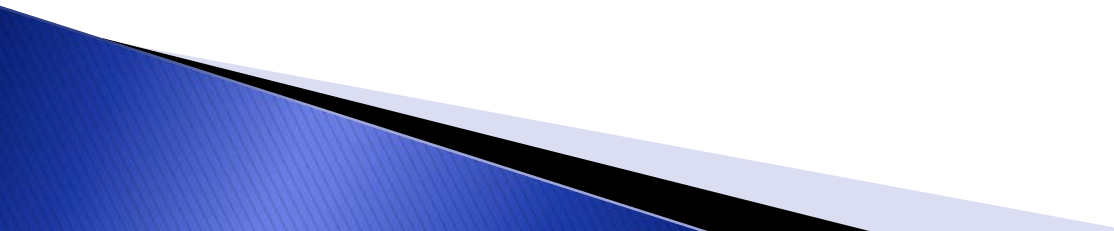
Job Description

Does your job description or contract contain?

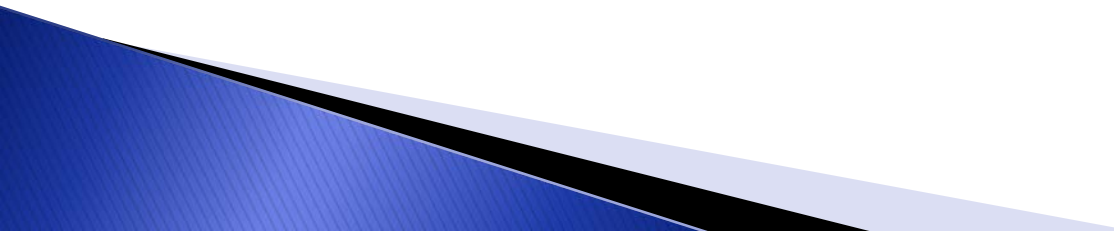
1. List of all patients/clients for whom you provide services
2. Job title
3. List of minimal requirements such as degree, certification, license etc...
4. Full scope of duties and services you will provide
 - Specific items that may need to be addressed
 - Providing emergency care to general student population, employees or others who may have access to your facility
 - Educational outreach
5. Description of oversight and reporting lines
6. How you are medically and administratively supervised
7. Description of travel requirements or location where you will provide services

Medical Documentation

CONSIDERATIONS

1. Do you document all AT Services you provide?
 2. Do you document all services provided for all patient populations?
 3. Is your documentation prepared and maintained in a manner consistent with all applicable laws and standards set forth by federal, state or local government?
- 

Medical Documentation

4. Does your documentation include emergency care and consultations?
 5. Is your documentation under two locks (i.e. in a locked room on a password-protected computer)?
 6. Is your documentation backed up regularly and stored in a secure location?
 7. If non-licensed/non-certified staff assist with documentation, do you review and sign off on all documentation?
- 

Medical Documentation

- ▶ Number one way to protect yourself
- ▶ As important to document what you don't find as it is what you do find
 - Current lawsuit against an AT
- ▶ Observation as an evaluation
- ▶ Do you document phone/text consultations to and from doctors, patient, parents, coaches?
- ▶ Documentation to defer liability
- ▶ Is it possible for what we do as ATs? YES

NATA Best Practice Statement being developed

Documentation

- ▶ Best Practice for AT Documentation
- ▶ Informed Consent
- ▶ Consent to Treat



From MaxPixel

Informed Consent

An athlete had a lateral meniscectomy. The strength coach wants to begin squatting as part of his conditioning.

What do you need to tell the patient and document to cover informed consent?



Informed Consent

You have an 5th year college FB player who tears his ACL. He wants try to participate wearing a brace and do surgery after season.

What do you do to follow the doctrine of informed consent?



Consent to Treat

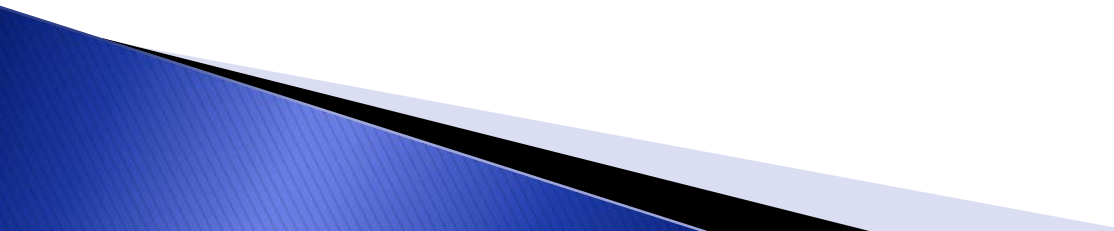
Coach makes it mandatory that the athlete comes in for treatment. The AT decides deep tissue massage is the best treatment for his condition. The patient tells you he does not want to do deep tissue massage. But since the AT believes it is the best treatment he does this treatment.

Has the AT complied with doctrine of informed consent?



Informed Consent/Consent to Treat

Four legal components

- ▶ Patient is competent and of age
 - ▶ Explanation of risks and benefits
 - ▶ Demonstrates understanding
 - ▶ Consent is voluntary
- 

Consent to Treat a Minor

- ▶ As a HS AT you are asked to evaluate a visiting team athlete
- ▶ Do you have consent to treat a minor?
 - Many state laws require you as an adult to remove if suspect a concussion but what about other injuries?
 - Without consent managing an acute emergency is appropriate in most situations (see state laws).
 - If you determine they are ok to return. Can you return them? That is a medical decision. This may require written consent to treat from “custodial parent”.
- ▶ Solution– Pre–season consent form signed to participate in athletics (see next slide for example)

Parental consent for minor athletes is generally required for sports medicine services, defined as services including, but not limited to, evaluation, diagnosis, first aid and emergency care, stabilization, treatment, rehabilitation and referral of injuries and illnesses, along with decisions on return to play after injury or illness. Occasionally, those minor athletes require sports medicine services before, during and after their participation in sport-related activities, and under circumstances in which a parent or legal guardian is not immediately available to provide consent pertaining to the specific condition affecting the athlete. In such instances it is imperative to the health and safety of those athletes that sports medicine services necessary to prevent harm be provided immediately, and not be withheld or delayed because of problems obtaining consent of a parent/guardian.

Accordingly, it is the policy of the _____ (name of school or district), as a pre-condition of participation in interscholastic athletics, that a parent/guardian provide written consent to the rendering of necessary sports medicine services to their minor athlete by a qualified medical provider (QMP) employed or otherwise designated by the school/district, to the extent the QMP deems necessary to prevent harm to the student/athlete. It is understood that a QMP may be an athletic trainer, physician, physician assistant or nurse practitioner licensed by the state of XXXXXX (or the state in which the student/athlete is located at the time the injury/illness occurs), and who is acting in accordance with the scope of practice under their designated state license and any other requirement imposed by state law. In emergency situations, the QMP may also be a certified paramedic or emergency medical technician, but only for the purpose of providing emergency care and transport as designated by state regulation and standing protocols, and not for the purpose of making decisions about return to play.

PLEASE PRINT LEGIBLY

"I, _____, the undersigned, am the custodial/legal guardian of, _____, a minor and student/athlete at _____ who intends to participate in the interscholastic sport/activity of _____.

I understand that the school/district employs or designates QMPs (as defined above) to provide sports medicine services (as also defined above) to the school's interscholastic athletes before, during or after sport-related activities, and that on certain occasions there are sport-related activities conducted away from the school/district facilities during which other QMP's are responsible for providing such sports medicine services. I hereby give consent to any such QMP to provide any such sports medicine services to the above-named minor. The QMP may make decisions on return to play in accordance with the defined scope of practice under their designated state license, except as otherwise limited by ("STATE") law.

I also understand that documentation pertaining to any sports medicine services provided to the above-named minor, may be maintained by the QMP. I, hereby authorize the QMP who provides such services to the above-named minor to disclose such information about the athlete's injury/illness, assessment, condition, treatment, rehabilitation and return to play status to those who, in the professional judgment of the QMP, are required to have such information in order to assure optimum treatment for and recovery from the injury/illness, and to protect the health and safety of the minor. I understand such disclosures may be made to the above-named minor's coaches, athletic director, school nurse, any classroom teacher required to provide academic accommodation to assure the student/athlete's recovery and safe return to activity, and any treating QMP.

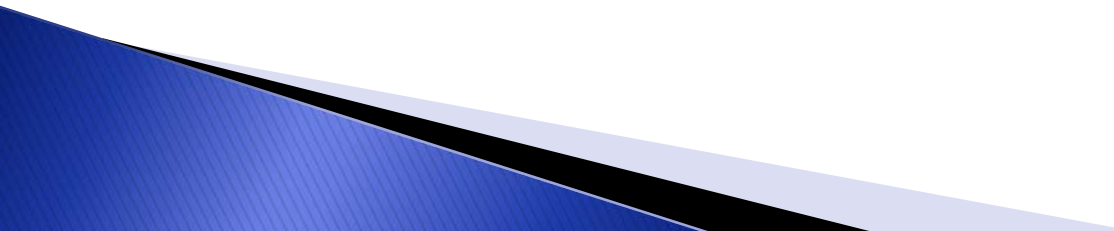
If the parent believes that the minor is in need of further treatment or rehabilitation services for the injury/illness, the minor may be treated by the physician or provider of his/her choice." I understand, however, that all decisions regarding return to activity following injury/illness shall be made by the QMP employed/designated by the school/district.

DATE: _____ SIGNATURE OF CUSTODIAL PARENT _____

Return to Play Decision

- ▶ Most important aspect of what we do
- ▶ Highest risk
- ▶ Documentation of informed consent


Specific Categories

- ▶ Sports Camps
 - ▶ High School Athletic Trainer
 - ▶ Educator–Role as a Clinical Preceptor
 - ▶ Mass Sport and Physical Activity Events
- 

Sport Camps

1. Are the sport camps owned and operated by the same company/school that you are employed full time?
 - If no do you become an independent contractor?
2. Is sport camp medical coverage part of your job description ?
3. Do you have written description of your responsibilities as an AT for camps? i.e. emergency care only, evaluation and decision on return, treatment, prevention such as taping.
4. If you are providing AT services at a sports camp as part of your job, does your employer have sufficient liability and professional liability coverage that includes your services at the sports camp? Are you as an AT a named insured under the general liability insurance? (request the insurance policy look for exclusions for professional negligence and/or health care professionals.)
5. If no, need to recommend that all parts of your job need to be included in job description
6. If standing orders or physician written protocols are part of physician's relationship in your practice act are these the same for camp as they are for your full time job?
7. Do you, or your employer, have consent to treat campers if the campers are not of legal age to consent to treatment?
 - If yes–Does the consent allow to you provide all the AT services that you provide (i.e. RTP after injury)

Educator–Role As Clinical Preceptor

1. Do all students you are preceptor for follow state practice act?
 2. Do you follow standard that student are within a range for you to intervene if something is done inappropriately?
 3. Do you require students to document all care that they provide?
 4. Do you review and co-sign all notes written by student?
 5. Is the role as a preceptor part of your job description?
- 

Lawsuit

- ▶ FB Player injured ankle during game. Ankle was taped by a volunteer who had been enrolled in an athletic training program at a nearby college. ATC was not present. Player went back in the game. During an ensuing play, player was tackled and fractured two vertebrae in his back as well as a minor traumatic brain injury.
- ▶ Family sued. Case was dismissed but had to be defended.
- ▶ If this case was in another state would it be different?

Vicarious Liability

You serve as a preceptor. Your assigned student has demonstrated competence and was working with your patient. Although you were in the clinic, the student misunderstood your directives and introduced an improper exercise regime which resulted in further injury.

Are you liable?



Vicarious Liability

Indirect responsibility for the acts and behavior of another.

- ▶ Secondary liability
- ▶ Respondent superior

Vicarious Liability

Definition

- ▶ Indirect responsibility for the actions of another

Vicarious liability

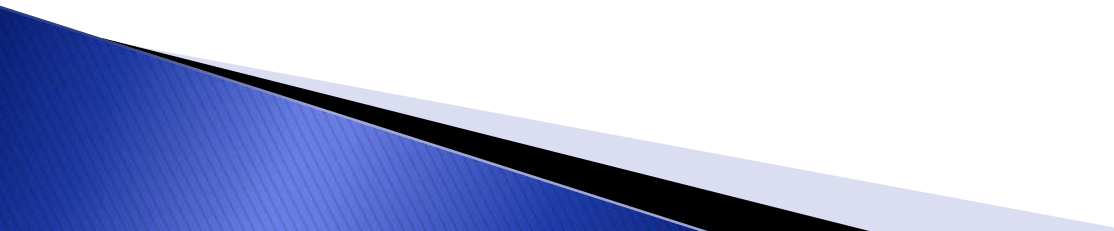
- ▶ Preceptor
- ▶ Classroom educator
- ▶ Clinical Coordinator
- ▶ Program director

ATP Policies and Procedure

- ▶ Best protection
- 

Vicarious Liability

Considerations

- ▶ Does your policy and procedure manual align with the state practice act? CAATE standards?
 - ▶ Do you require students to document all care provided?
 - ▶ Do you review and co-sign all notes written by your assigned student?
 - ▶ Is your role as a preceptor part of your job description
- 

Non-licensed “helpers” in your facility

How do you decide what a non licensed person do in your facility or with patients/athletes under your care?



From Pixabay

High School Athletic Trainer

1. Do you have Conference/League agreements to provide care for visiting teams?
 - a. Is this agreement in writing?
 - b. Does this agreement specifically designate who has authority to remove a patient/athlete if they are unsafe to return?
 - Is it the visiting coach, the referee or you as the medical provider? (i.e. if the visiting coach returns a player with a concussion do you as AT have authority to notify referee that that player is not allowed back in game or do you as an AT recommend to the coach the player should be removed and it is his or hers responsible to not allow player to return?)
 - c. If yes is this in your job description?
 - d. Do you have consent to treat for minors for these patient/athletes?
 - e. Do you document appropriately for this care you provide ?

High School Athletic Trainer

Do you receive extra pay by an outside entity to provide coverage for championships or outside events at your school as a part of your normal job?

- If yes–Are you still covered by your full time employer's professional liability coverage or does this make you an independent contractor?

▶ State of Arizona



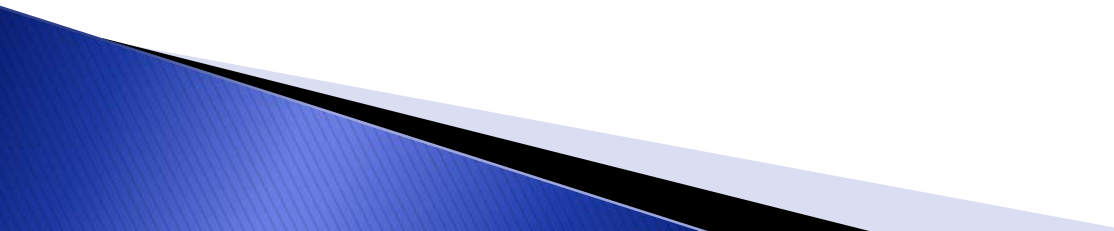
Mass Sport and Physical Activity Events

1. Are you covered by liability insurance of the company that runs or operates the event?
2. Does the company that runs or operates the event provide professional liability coverage or insurance?
3. Does the company that oversees the event have coverage for
 - a. Sexual Misconduct Coverage
 - b. License Protection
 - c. Defendant expenses including loss of wages
4. Do you have means to document all care provided including patient demographics?
5. Do you have means to determine if the patients you are providing care for are minors with appropriate consent to treat?
6. If covering this event is secondary to your full time job does your full time employer or your personal policy cover you as a volunteer?
7. Do you have physician oversight as determined by State Practice Act or BOC that would cover you for these events specifically?

Evaluating Professional Liability Insurance

1. Review exclusions to determine that any activity in your practice would be excluded from liability coverage.
2. Is “athletic trainer” specifically mentioned as covered profession in the plan?
3. Review the claims made coverage limit and aggravate coverage limit.
 - Make sure that coverage is appropriate for your specific setting and location
4. Review to determine if you have coverage for
 - Disciplinary defense
 - Deposition
 - Defendant (lost wages)
5. Determine if your plan is a Claims–Made or Occurrence policy
 - Understand your reporting requirement (procedure timeline) for both types of policy


Evaluating Professional Liability Insurance

6. Do the broker and insurance company have experience in your profession?
 7. Review the financial strength of the insurance company.
 - Recommend a carrier with A or better rating from A.M. Best and an A rating or better from Standard and Poor's.
 8. Does the provider have a “seal of approval” from a health care association or does a colleague have personal experience with the quality of claim services?
 9. What is the providers Enterprise Risk Management plan graded at?
 10. Does the policy allow you to transfer your coverage if you change employers?
 11. What is the providers spelled out plan on cancelation?
- 

Personal Professional Liability Coverage by a Secondary Provider

1. Does this plan cover you for all aspects of your practice and for all patients you provide care for? (see above list for details)
2. Does this plan cover you as an independent contractor for “moonlighting” or for providing services outside of the scope of your full time employment? (May be hours or percent of time or work)
3. What is the period of coverage and is all coverage current ?
4. Does your personal coverage have tail coverage/extended reported period prevision?
5. Does your personal coverage provide license protection?
6. If you are changing coverage plans or employment does your plan prevent any gap in coverage?

Take Home

- ▶ Review your job description to make sure it covers all part of your job and all patients you provide care for.
 - ▶ Make sure you have consent to treat for all patients you provide care for. Especially minors.
 - ▶ Know your state practice act and make sure you are following all aspects in your job.
 - ▶ **SUPPORT FEDERAL LEGISLATURE “H. R. 921 / S.689**
 - ▶ Document– especially RTP and informed consent
 - ▶ Make sure you are covered by professional liability insurance or coverage.
- 

Conclusion

Questions?

Protect yourself

“If you do it they will let you
and they won’t pay you
more to do it.” Mildenberger
2012

