

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

ATHLETIC TRAININERS

1995 SUNRISE REVIEW



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1995-1996 Members***

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

We have completed our evaluation of the sunrise application for licensure of **athletic trainers** and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to §24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

Joseph A. Garcia
Executive Director

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INTRODUCTION

The Sunrise Process

The Colorado Sunrise Act, §24-34-104.1, C.R.S., requires any occupation or profession requesting regulation to submit an application to the Joint Legislative Sunrise/Sunset Review Committee of the Colorado General Assembly. The Committee may then direct the Department of Regulatory Agencies (DORA) to prepare an objective evaluation of the proposal. Pursuant to the Colorado Sunrise Act, §24-34-104.1, C.R.S., the applicants must prove the benefit to the public of their proposal for regulation according to the following criteria:

1. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;
2. Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;
3. Whether the public can be adequately protected by other means in a more cost-effective manner.

The Colorado Athletic Trainers Association (CATA) has submitted an application for licensure, the most restrictive form of professional regulation. The association is affiliated with the National Athletic Trainers Association (NATA). The CATA has approximately 150 members. The Association estimates there are over 230 NATA Certified Athletic Trainers in Colorado.

THE PROPOSAL FOR REGULATION

Athletic trainers have submitted previous applications for regulation in 1987 and 1990. The 1987 sunrise report did not recommend certification as requested by the applicant. However, the report did recommend trainers be registered as physician extenders in compliance with §12-36-103(3)(1), C.R.S., the physician extender section of the Medical Practices Act (MPA). The recommendation was not implemented.

The 1990 sunrise report did not recommend licensure as requested by the applicant. The report did identify issues related to the practice of athletic training without the direct supervision of a physician. Specifically, the report cited an Ohio incident in which a NATA Certified Trainer was arrested and charged with practicing medicine without a license. The Sunrise/Sunset Committee did amend the MPA to resolve issues raised in the report. Changes to the MPA are discussed in the Statutes and Regulations Section of this report.

Profile of the Occupation

Athletic trainers are health care professionals concentrating in the sports medicine field. The practice of athletic training is divided into two main components. The first, rehabilitation, is practiced at a variety of sites including secondary and post secondary schools, hospitals, and medical clinics, under the supervision or direction of a physician. The second, injury prevention and conditioning, is performed mainly at practices and events for organized athletic competition.

Athletic trainers are frequently the first point of contact for an injured athlete and provide primary first aid and emergency medical attention. In this role, the trainer functions much as an emergency medical technician or paramedic. The performance of trainers in this area has been credited with saving lives and reducing the severity of several potentially devastating injuries. Most notable in Colorado is the incident involving a University of Colorado football player receiving a severe head injury during a game in 1989. A certified trainer immobilized the head and neck of the player and called for immediate transport to a medical facility.

Professional sports teams and most college athletic programs have NATA certified athletic trainers on staff. In addition to emergency medical treatment, the trainer is responsible for developing individualized conditioning and rehabilitation programs for athletes. According to the NATA, the number of days lost to injury in athletic programs using the services of certified athletic trainers is significantly lower than that for programs without certified trainers. This is attributed to a combination of better conditioning, and the early identification and treatment of minor injuries.

Athletic trainers are a specialized segment of the health care profession. They are differentiated from Emergency Medical Technicians in the injury prevention and rehabilitation arenas. While they use many of the rehabilitation techniques used by physical therapists, the scope is focused on injuries resulting from participation in athletic activities. Athletic trainers are also differentiated from related occupations by their involvement in the conditioning of athletes.

There are a variety of related occupations not currently regulated under Colorado law. These include occupational therapists, physical trainers, exercise therapists, personal trainers and coaches.

Profile of the Clientele

The high profile clientele of an athletic trainer is the professional athlete. In fact, the NFL Players Union Contract specifies that each NFL team must have a NATA Certified Athletic Trainer on staff. Most competitive intercollegiate programs also use NATA certified trainers.

Athletic trainer services are available to all athletes. The NATA defines "athlete" very broadly, including any participant in an organized sport either professional or amateur, at the intramural, interscholastic, intercollegiate and international levels. An individual recreational skier or jogger would also be classified as an athlete by the association.

When working in an organized sports setting, such as with a school or professional sports team, the initial responsibility of the trainer is conditioning and injury prevention. This involves such activities as taping joints, padding injury prone areas and ensuring the appropriate protective equipment is properly fitted and worn. Athletic trainers routinely observe practices and advise coaches about unsafe conditions which contribute to athletic injuries. Trainers work with individual athletes and coaches on specific conditioning programs to reduce injuries during the course of an athletic season.

When an injury occurs, the athletic trainer is usually the first health care professional available to make an initial diagnoses. Depending on the severity of the injury, the trainer will recommend treatment and rehabilitation in accordance with established protocols or refer the athlete to the team or personal physician. The degree of supervision of trainers by the team physician varies. Usually team physicians are only on site during actual competition. In the absence of direct supervision, trainers use a great deal of professional judgment to diagnose and treat minor injuries resulting from participation in athletic events or practices.

Athletic Trainer Practice

Clinical Setting

As mentioned above, the practice of an athletic trainer is divided into two broad areas. The rehabilitation portion takes place in a clinic or clinic type setting under the direction of a physician. The clinic setting could be a variety of licensed medical facilities or the training room of a high school. Athletic trainers utilize approved treatment modalities to rehabilitate injuries diagnosed by a physician. In a medical facility, the trainer may work with licensed physical therapists and other health care professionals. In the school setting, the trainer may be working with athletes referred by a family physician or may be utilizing approved modalities after consulting with a supervising physician. Depending on the severity of the injury, a physician may refer an athlete to a trainer and direct specific treatment, or the physician may diagnose the injury and allow the trainer to develop an individualized treatment plan based on approved modalities.

Field Setting

The field setting encompasses the practice of trainers in injury prevention, and when necessary, first aid. Injury prevention generally involves proper taping and or the application of devices designed to restrict movement to reduce sprains and related injuries. Certified Athletic Trainers are qualified to identify adequate protective equipment needs and proper fit of such equipment. Trainers evaluate field conditions and caution participants and coaches about potential hazards.

Contact sports, such as football, hockey and wrestling, incur the most frequent, and more severe injuries. Most high school level events involving these sports have Emergency Medical Technicians (EMTs), ambulance services and or physicians on site during competition. However, according to the NATA, most injuries for this level of competition occur during practices, which are usually diagnosed and treated by a trainer. In programs without the services of a trainer, the coach often serves in a dual role as coach and trainer. Certified Athletic Trainers have extensive education and experience in the proper treatment of sports related injuries. In fact, even in events where physicians and EMTs are available, trainers are usually the first medical professional to evaluate an injury.

Trainers are not eligible for 3rd party insurance reimbursement, nor are they seeking eligibility through this application. Trainers in a clinic setting are employees of the clinic or a physician and the employer is responsible for insurance billings, if any. Trainers in a field setting are employees of the team or school district. Schools or recreational districts frequently contract with a clinic or individual trainer to provide athletic trainer services.

OTHER REGULATION

Regulation in Other States

Approximately 20 states currently license athletic trainers and legislation to implement licensure has been proposed in several states. Some states, such as New Mexico, have established separate boards with licensing and disciplinary authority. Others, such as Oklahoma, license practitioners through their state medical board. Some states, administer the licensing and discipline administratively directly through an occupational licensing agency with an advisory board made up of athletic trainers.

Potential Cost of Regulation in Colorado

Most occupational licensing programs in Colorado are cash funded. Substantial fixed costs are associated with any licensing program. As a profession with a relatively small number of practitioners, athletic trainers could be faced with a relatively expensive license fee. The CATA has surveyed its membership and indicate a majority of them are willing to pay substantial fees for licensure.

Fees for licensure in other states range from \$45 to \$200 per year. However, many of these states supplement the licensing programs with funds from other sources. Occupational licensing programs in Colorado with similar numbers of practitioners are podiatrists with a fee of \$350 per year and acupuncturists, with a fee of \$309 per year. Legal expenses incurred by the board which regulates the 25 licensed midwives in Colorado, has resulted in their licensing fee to be increased to over \$1,300 this year.

Private Credentialing

The applicant has recommended that the NATA Certification be accepted as the minimum qualification for licensure in Colorado. The NATA Certification is administered by the National Athletic Trainers Association Board of Certification (BOC), an independent national organization that sets professional standards and administers a comprehensive examination for athletic trainers.

To be eligible for the NATA certification, a candidate must have a bachelors degree from an approved program and practical experience under the supervision of a NATA Certified Trainer. Colorado currently has NATA approved programs at eight schools requiring 1500 hours in an internship under a Certified Trainer that lead to a degree in Exercise Science, Kinesiology or Physical Education. The University of Northern Colorado offers a degree program in Exercise Science with an emphasis in Athletic Training. The UNC program requires 800 hours in an approved internship and is also accredited by the NATA.

The NATA exam consists of two parts. The first part is a proctored written examination. The second part is an individual practical examination performed before representatives of the BOC. The examination is considered to be extremely comprehensive. Approximately 50% of the examinees obtain a passing score on the first attempt. The exam is given at regular intervals in each region of the country. The Western Regional Examination was last given in Denver in March of 1995. NATA Certification is valid for three years. During this time period, the trainer must achieve eight hours of approved continuing education in order to renew the certification.

Voluntary certification programs are usually established by members of a profession as a form of self regulation. Certification by a professional organization provides the public with knowledge that an individual has been recognized by his or her peers as having obtained a minimum level of competency. Voluntary certification programs have no legal public protection or enforcement powers, unless required by law for the practice of a profession.

Statutes and Regulations

The Colorado Medical Practices Act (MPA), contained in article 36 of title 12, Colorado Revised Statutes, defines and regulates the practice of medicine. Section 106 of the MPA provides exemptions for licensing for specific activities. Among the exemptions is the “rendering of services by an athletic trainer subject to the conditions and limitations provided in subsection 3.5 of this section.” The exemption for Athletic Trainers was added to the statute in HB 91-1127, based on the 1990 Sunrise report. The provisions of the MPA apply to the practice of athletic training in the course of participation in a defined athletic event.

The MPA defines a qualified athletic trainer as a person with a baccalaureate degree in athletic training or a related field from an accredited college or university. The degree program must include an internship or the individual must obtain clinical experience under the supervision of a person accredited by a national athletic training standards organization designated by the state Board of Medical Examiners (Board).

The act defines an athlete as an individual participating in an educational institution’s sports program, an organized amateur sports organization, a professional sports organization, a recreational program of a county, municipal, or special district or an organized community sports event.

In §12-36-106(3.5)(d), C.R.S., the MPA defines the scope of practice for athletic trainers and requires the Board to promulgate regulations specifying the types of services a “qualified athletic trainer” may render. Included in the scope of practice is: the development of conditioning programs, the application of tape, braces and protective devices to prevent injury, the supervision and maintenance of athletic equipment to assure safety, identification of preexisting physical conditions in an athlete which pose a risk of injury, the use of exercise and other therapies to rehabilitate an injured athlete and maintenance of athletic training records.

Regulations

The Board has adopted, in regulation 3-CCR-713-9, certification by the National Athletic Trainers Association (NATA) as the state standard for intern supervision. To obtain NATA Certification, a trainer must have a bachelors degree from an accredited college or university in a field related to athletic training, experience under the supervision of a Certified Athletic Trainer ranging from 800 to 1500 hours, and a passing score on a comprehensive examination. NATA Certified trainers must complete eight hours of continuing education every three years to maintain certification.

The Board has established the types of services qualified athletic trainers may perform:

- determination of therapeutic goals;
- selection of appropriate treatment modalities;
- the evaluation and recording of rehabilitation progress; and
- the development of criteria for return to play and the use of various therapeutic modalities, including water, electricity, heat, ice, exercise and massage.

The Board regulations do not allow invasive procedures. The MPA exempts from regulation any person performing emergency first aid to injured persons.

PUBLIC HARM

Athletic events expose participants to potential injury. Most injuries consist of minor bruises or muscle strains. However, severe injuries and even deaths have occurred in Colorado. Concern about the transmission of diseases through contact with body fluids, especially blood, has resulted in public awareness and education to potential exposures. Certified Athletic Trainers, as with all health care professionals, have specific training in sanitation, disease prevention and proper disposal of contaminated items such as bandages and dressings. Many school systems and athletic organizations have adopted protocols to minimize risk in situations involving even minor bleeding. It is not necessary to be a health care professional to recognize a situation involving bodily fluids and follow an established protocol.

Athletic trainers are bona fide members of the sports medicine profession. The value of the profession, and the NATA Certification, is recognized and appreciated by medical organizations such as the American Academy of Orthopedic Surgeons and the National Commission on Health Certifying Agencies. Amateur and professional athletes and coaches support the use of certified trainers to reduce injuries and speed rehabilitation.

The definition of a qualified athletic trainer in the MPA requires the education and experience necessary to qualify to sit for the NATA BOC examination. However, the definition falls short of requiring an independent evaluation of the education and experience associated with an examination. The current standard requires a minimum level of education, not a minimum level of competency. Clearly, the ability to obtain and maintain certification by the NATA is a higher standard than currently required to be considered qualified by the current statute in Colorado. However, there is no evidence to support that the higher standard requested by the applicant is necessary to protect the public.

According to the applicant, Certified Athletic Trainers always work under the direction of a physician. The degree of supervision varies greatly depending on the setting the trainer is working in. In the field setting, team physicians maintain close contact with athletes and trainers at the professional and college level. At the high school and recreational levels, physicians may be in attendance at games but rarely at practices.

In a clinical setting, the supervision is likely to be more direct, with the trainer supervised by a physician or a physical therapist. The degree of supervision varies depending on the type of facility. In a medical facility, the trainer may function as a physical therapy assistant with direct oversight by a licensed physical therapist. In a school, the trainer typically follows established protocols, periodically consulting with a supervising physician.

In either setting, the supervising physician has responsibility for proper diagnosis and treatment. Malpractice insurance is available to NATA Certified Trainers through the association, as well as private insurance carriers. As a practical matter, the physician as the “deep pocket” has the most liability exposure in a malpractice claim.

The application and supplemental information provided by the applicant demonstrates the benefits of the use of qualified trainers. The application also shows a very strong professional organization, with high standards for education and experience prior to obtaining a private certification. While the profession, through NATA has done a good job of communicating these standards to medical professionals, it has not done so to its clients. Interviews with persons contracting for the services of athletic trainers revealed a lack of knowledge concerning the qualifications of certified trainers.

What has not been clearly shown is recognizable harm to the public by the unregulated practice of the profession. The MPA exempts qualified athletic trainers from licensing under the Act. The practice of athletic training by persons not qualified as defined in the Act are subject to prosecution for practicing medicine without a license. No complaints have been filed with the Board related to unqualified persons serving as athletic trainers. The Board also has no record of complaints regarding the services of qualified athletic trainers.

If trainers were licensed, the public could expect an evaluation of competency that does not currently exist. Complaints against practitioners would be referred to a centralized agency and disciplinary actions would be implemented. However, if substandard care was a major concern of the public, it would be reasonable to expect a number of complaints would be filed with medical boards in states without regulation and with licensing boards in states with regulation.

A survey of states with licensing programs shows very few complaints against practitioners. In fact, the most common disciplinary action by licensing boards is investigation of practicing athletic training without a license. The Colorado Board of Medical Examiners does not track complaints against non-licensed individuals or practices. However, staff in the Division of Registrations have indicated they have not received any complaints about the service provided by qualified trainers.

The applicants have stated it is not the intent of licensure to require amateur athletic programs to use licensed trainers. However, it is the nature of licensure to prevent otherwise qualified but unlicensed individuals from practicing the regulated trade, even on a volunteer basis. One possible effect of licensure would be an increase in the hiring of certified trainers by high school athletic programs. While this is desirable, it would place a severe economic burden on strained budgets of many school systems. It is also questionable whether the current supply of certified trainers could meet the potential demand, particularly in rural areas.

Another question in the Sunrise process is whether the public can reasonably expect to benefit from continuing professional competence. In this instance the applicant has documented the advantages of qualified trainers. Studies have shown athletic programs using qualified trainers experience fewer and less severe injuries. The re-injury rate in programs using qualified trainers is significantly lower than those without trainers. Student athletes in programs with qualified trainers miss fewer games and practices than their counterparts in other programs.

Individuals in a position to hire, contract or refer to trainers are not unsophisticated. They are skilled physicians, school administrators and coaches. Each of these professions has an obligation to the people they serve to evaluate the qualifications of any employees or subcontractors they allow to interact with patients, students or athletes in their care. Individuals in these professions contacted during the course of this report generally supported the regulation of athletic trainers. However, they were unsure of the qualifications of the trainers used by their own organizations. CATA should be encouraged to increase educational and outreach efforts to the Colorado Association of School Boards, The Colorado Medical Society, and other groups with influence over athletics and health care decisions.

RECOMMENDATIONS

Continue Current Regulatory Structure

Recommendation 1

Continue the current regulatory structure for athletic trainers.

The applicant has applied for licensure. Before a recommendation for licensure can be given, the applicant must prove the unregulated practice of the occupation clearly endangers the health of the public. In the application and supplemental materials, the applicant provided documentation of severe injuries, even deaths occurring at athletic events conducted without the services of NATA Certified Trainers. While this is disturbing, the licensing of trainers in itself would not insure the presence of licensed trainers at these events. Even if certified trainers had been present at the events in question, there is no evidence the injuries could have been prevented. Requiring qualified medical personnel at all athletic events in the state may enhance the safety of the athletes involved. However, it is an alternative which would be expensive, impractical and probably difficult to enforce.

No evidence was provided by the applicant, or revealed by independent research, of harm to the public by unqualified trainers performing rehabilitation functions. In a rehabilitation situation, the responsibility for proper care lies with a licensed physician. The public can be adequately protected by requiring standardized qualifications for individuals holding themselves out to be “qualified” trainers. The authority of the Board in §12-36-106(3)(1), C.R.S. is sufficient to allow the Board to investigate complaints involving the use of the title.

**Delete
Statutory
Reference**

Recommendation 2

Delete statutory reference, §12-36-106(3.5)(f), C.R.S. directing the Board of Medical Examiners to report to the Sunrise and Sunset Committee following the 1992 session.

HB 91-1127 directed the Colorado Board to report to the committee if it failed to promulgate regulations under §12-36-106(3.5), C.R.S. The Board did promulgate the regulations in question, rendering the report unnecessary.

