

Sunrise Report

Licensing of Athletic Trainers

**The Certification Organizations That
Currently Regulate Athletic Trainers in
West Virginia Adequately Protect the Public**



**October 2004
PE 04-11-322**

JOINT COMMITTEE ON GOVERNMENT ORGANIZATION

Senate

Edwin J. Bowman
Chair

Billy Wayne Bailey, Jr.
Vice Chair

Donna J. Boley
Anita Skeens Caldwell
H. Truman Chafin
Evan H. Jenkins
Jeffrey V. Kessler
Brooks McCabe
Joseph M. Minard
Sarah M. Minear
Larry L. Rowe
Lisa D. Smith
Herb Snyder
Russ Weeks
Randy White

House of Delegates

J.D. Beane
Chair

Timothy R. Ennis
Vice Chair

Otis A. Leggett
Minority Chair

Tom Azinger
Craig P. Blair
Greg Butcher
Don Caruth
Joe C. Ferrell
Cindy Frich
Barbara Hatfield
Richard J. Iaquina
Tom Louisos
Tim Manchin
Dale Manuel

Dale Martin
Don Perdue
Roger Romine
Patti Eagloski Schoen
Sharon Spencer
Joe Talbott
Kenneth D. Tucker
Ron Walters
Bill Wright
Emily Yeager
Jack Yost



OFFICE OF THE LEGISLATIVE AUDITOR

Aaron Allred
Legislative Auditor

John Sylvia
Director

Russell Kitchen
Senior Research Analyst

Brandon Burton
Research Analyst

Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Contents

Executive Summary	3
Background	5
Finding 1: The Certification Organizations That Currently Regulate Athletic Trainers in West Virginia Adequately Protect the Public.....	7
List of Tables	
Table 1: Composition of Certified Athletic Trainers in West Virginia.....	10
Table 2: Certification, Professional and Proposed Licensure Fees Paid by Athletic Trainers in West Virginia.....	14
Table 3: Regulation of Athletic Trainers in the United States.....	15
List Of Appendices	
Appendix A: Transmittal Letter to Agency.....	19
Appendix B: State Level Regulation.....	21
Appendix C: Agency Response.....	27

Executive Summary

Finding 1: The Certification Organizations That Currently Regulate Athletic Trainers in West Virginia Adequately Protect the Public.

The Applicant's proposed board would require licensees to be certified by NATABOC. Therefore, the proposed board would duplicate standards that presently exist.

A group of professional athletic trainers representing the West Virginia Athletic Trainers' Association submitted an application to the Joint Standing Committee on Government Organization proposing licensure of its profession. The Applicant has two basic arguments for granting licensure:

1. A licensure board would protect the public from unqualified practitioners through more demanding educational requirements than those of the State Board of Education.
2. A licensure board would be able to investigate complaints and take legal action against athletic trainers, whether they are licensed or unlicensed.

The harm posed by unlicensed or negligent practitioners in West Virginia is relatively low and the creation of a board would create additional costs to athletic trainers practicing in the state while providing little or no additional protection to the public.

Athletic trainers are certified through the National Athletic Trainer's Association Board of Certification (NATABOC). The Legislative Auditor's Office has found that the educational background required by the State Board of Education is actually similar to that required by NATABOC. In order to be called a certified athletic trainer by NATABOC, an individual must successfully complete the NATABOC examination. To be eligible to sit for the NATABOC examination, individuals must have completed a bachelors degree from an Athletic Trainers Education Program (ATEP), which is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or another agency that accredits ATEP's. A certified athletic trainer must earn 80 Continuing Education Units (CEUs) every three years. Evidence of CEUs and a Cardio-Pulmonary Resuscitation (CPR) Certification must be submitted to the NATABOC to maintain certification.

A primary concern of the Applicant is that the national certification entity lacks a physical presence in West Virginia, and thus has no jurisdiction over individuals who are not certified but hold themselves out as certified athletic trainers. A licensure board's enabling statute would prohibit the practice of unlicensed athletic trainers. The Applicant provided some documentation of one case in Tennessee where a university's athletic trainer and the school were found negligent and caused harm to a student. The court case resulted in monetary damages awarded. It is not clear from the case whether the athletic trainer in question was certified or not. Nevertheless, Tennessee had a licensing board at the time of this incident. Therefore, the existence of a licensure board would not prevent negligence or preclude the need for the public to file lawsuits against athletic trainers (licensed or unlicensed) if monetary damages are sought.

Legislative Services within the Legislative Auditor's Office identified 24 published court cases from courts of records nationwide against athletic trainers since 1971. None were in West Virginia. The Legislative Auditor's Office also contacted NATABOC to obtain data on complaints and disciplinary actions taken against athletic trainers certified in West Virginia for the previous five years. NATABOC reported two complaints concerning unlicensed practices during that period and no disciplinary actions against certified athletic trainers. The State Board of Education reported one disciplinary action, that led to the revocation of certification, during the five-year period.

The existence of a licensure board would not prevent negligence or preclude the need for the public to file lawsuits against athletic trainers (licensed or unlicensed) if monetary damages are sought.

A proposed board would have jurisdiction over unlicensed practices only in the sense that its enabling statute would prohibit unlicensed practices. However, the board would have no legal recourse in such cases because generally chapter 30 boards are not granted authority to issue cease and desist orders. Moreover, the Applicant's proposed board would require licensees to be certified by NATABOC. Therefore, the proposed board would duplicate standards that presently exist. The harm posed by unlicensed or negligent practitioners in West Virginia is relatively low and the creation of a board would create additional costs to athletic trainers practicing in the state while providing little or no additional protection to the public. **Given the low risk of harm to the public and the existence of two regulatory entities, the Legislative Auditor concludes that the creation of a licensure board is not currently necessary and the cost of a new board would outweigh any added benefits provided.**

The Applicant also argues that the State Board of Education's certification process is inadequate because it does not require a four-year degree in athletic training from an accredited institution. The Legislative Auditor determined that this argument is not accurate. The Legislative Auditor's Office also found that the Applicant's proposed arrangement for the new licensure board's office space is a potential conflict of interest and would create public accessibility problems. The Applicant's projected number of licensees and license fees collected would be inadequate to permit the new board to have a free-standing office. The Applicant therefore plans to place the board's office space within the office of the lobbying firm which currently represents the Applicant.

Recommendation 1

The Legislature should consider not establishing a board to license athletic trainers.

Background

West Virginia Code §30-1A-3 requires the Performance Evaluation and Research Division of the Legislative Auditor's Office to analyze and evaluate the application of professional and occupational groups who seek to be regulated. Applicants must submit the application to the Joint Standing Committee on Government Organization no later than the first day of December of any year. After its evaluation of an application, the Performance Evaluation and Research Division must submit a report to the Joint Committee on Government Organization no later than the first day of July following the date the application was submitted.

The report submitted to the Committee shall include evaluation and analysis as to:

- 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;
- Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence;
- Whether the public can be adequately protected by other means in a more cost effective manner.

Finding 1

The Certification Organizations That Currently Regulate Athletic Trainers in West Virginia Adequately Protect the Public.

According to the National Athletic Trainer's Association Board of Certification, there are 236 certified athletic trainers practicing in West Virginia. There are also 138 athletic trainers in the state who are certified by the State Board of Education. Thirty-two states have instituted licensure for the profession.

The existence of a licensure board would not preclude the need for the public to file lawsuits against an athletic trainer (licensed or unlicensed) if monetary damages are sought.

Introduction

A group of professional athletic trainers representing the West Virginia Athletic Trainers' Association has submitted an application to the Joint Committee on Government Organization proposing licensure of its profession. The national organization for athletic trainers is known as the National Athletic Trainers' Association (NATA) and has been in existence since 1950. Athletic trainers are certified through the National Athletic Trainer's Association Board of Certification (NATABOC). The two have been separate organizations since 1989. According to NATABOC, there are 236 certified athletic trainers practicing in West Virginia. There are also 138 athletic trainers in the state who are certified by the State Board of Education. Thirty-two states have instituted licensure for the profession.

The Applicant contends that although athletic trainers in West Virginia are certified through a national or state organization, the protection to the public is still inadequate. The Applicant's primary concern is that the national certification entity lacks a physical presence in West Virginia. This limits its ability to take action against unlicensed athletic trainers who may harm the general public. A licensure board located in the state would have jurisdiction over unlicensed practitioners through its enabling statute. Individuals must currently take legal action themselves if they are harmed by unlicensed members of the profession. Most complaints in states that have instituted licensure are related to unlicensed practitioners. Legislative Services identified 24 published court cases nationwide against athletic trainers, none of which were in West Virginia. It is not clear from the description of these court cases if the athletic trainers in question were licensed or unlicensed. Several of these court cases were filed in states that had an athletic trainers licensing board. Therefore, the existence of a licensure board would not preclude the need for the public to file lawsuits against an athletic trainer (licensed or unlicensed) if monetary damages are sought.

The Applicant provided some documentation that the potential for harm to the public exists, although actual cases of negligence are relatively small and none are documented for West Virginia. The harm posed by unlicensed practitioners does not appear prevalent enough in West Virginia to warrant the institution of licensure.

Given the low risk of harm to the public from unlicensed athletic trainers and the existence of two regulatory entities, the Legislative Auditor's Office concludes that the creation of a licensure board is not currently necessary.

There are 27,158 certified athletic trainers nationwide, according to the latest poll from the National Board of Certification, including 236 living in West Virginia. This total includes 11 who are also certified by the State Board of Education.

The Applicant also argues that the State Board of Education's certification process is inadequate because it does not require a four-year degree in athletic training from an accredited institution. The Legislative Auditor determined that this argument is not accurate. **Given the low risk of harm to the public from unlicensed athletic trainers and the existence of two regulatory entities, the Legislative Auditor's Office concludes that the creation of a licensure board is not currently necessary.**

The Applicant's Argument for Regulation

The Applicant defined the duties of a certified athletic trainer in its Sunrise Application, as indicated below:

Certified athletic trainers (ATCs) are allied health care professionals whose main focus is to prevent, recognize, manage and rehabilitate injuries that result from physical activity. Specifically, the ATC practices in six areas or domains:

- *prevention of injuries*
- *recognition, evaluation and assessment of injuries*
- *immediate care of injuries*
- *treatment, rehabilitation and reconditioning of injuries*
- *organization and administration*
- *professional development and responsibility*

Athletic trainers may work in a secondary school setting, at a college or university, in professional sports, in sports medicine clinics, in health clubs or corporate health programs. In a sports medicine clinic the athletic trainer would work with physical therapists, occupational therapists, and massage therapists. In secondary schools, colleges and professional sports, an athletic trainer may work with many different sports ranging from football, baseball, basketball, hockey or soccer. There are 27,158 certified athletic trainers nationwide, according to the latest poll from the National Board of Certification, including 236 living in West Virginia. This total includes 11 who are also certified by the State Board of Education (see Table 1).

The Applicant feels that licensure is needed for athletic trainers in the state of West Virginia to increase the level of protection to the health, safety and welfare of the public and to ensure standards of competency. The Applicant has two basic arguments for granting licensure:

The Board of Education actually requires state-certified athletic trainers to either have a bachelors degree in athletic training or to complete six credit hours per year towards completion of such a degree within five years.

1. A licensure board would protect the public from unqualified practitioners through more demanding educational requirements than those of the State Board of Education.
2. A licensure board would be able to investigate complaints and take legal action against athletic trainers, whether they are licensed or unlicensed.

Applicant's Argument Against Board of Education is Invalid

The first argument is premised on an incorrect understanding of the State Board of Education's educational requirements for athletic trainers. The Sunrise Application provides an inaccurate description of the qualifications for athletic trainers certified by the Board of Education:

Individuals who wish to become state certified athletic trainers must complete a bachelors degree in some area. It does not have to be in athletic training, nor in any medical field. Upon completion of their degree, they take 6 credit hours in athletic training course work, apprentice under a physician or ATC for 200 hours, and then must pass an exam (Praxis II) to receive their certification.

The Praxis II Exam is a standardized test taken by teachers according to their specialties. One version of the test is designed for athletic training. Some examples of teachers and other educational specialists who take Praxis II Exams include Latin, Math and Russian teachers, as well as School Counselors and Speech Pathologists. The required tests are all different.

Table 1 Composition of Certified Athletic Trainers in West Virginia	
NATABOC Certified	236
Certified Through State Board of Education	
Graduates of accredited schools*	128
Have not yet completed a degree	6
Temporary authorization	4
Total BOE certified	138
Grand Total*	363
<p><i>*Also includes 11 athletic trainers certified by NATABOC. The Grand Total does not duplicate the eleven athletic trainers who are certified by both organizations.</i></p> <p><i>Source: State Board of Education and NATABOC</i></p>	

While most athletic trainers employed by the State Board of Education are not NATABOC-certified, the majority (117) have completed a bachelors degree in athletic training from an accredited college or university in the state. Presumably, these athletic trainers could obtain NATABOC certification if they desired or were required to do so, after passing the required examinations.

The Legislative Auditor’s Office contacted the State Board of Education to confirm the information provided by the Applicant. The Board actually requires state-certified athletic trainers to either have a bachelors degree in athletic training or to complete six credit hours per year towards completion of such a degree within five years. Eleven state-certified athletic trainers are also NATABOC-certified, and therefore, possess the same educational and experience qualifications as athletic trainers employed outside of a school setting. While most athletic trainers employed by the State Board of Education are not NATABOC-certified, the majority (117) have completed a bachelors degree in athletic training from an accredited college or university in the state. Presumably, these athletic trainers could obtain NATABOC certification if they desired or were required to do so, after passing the required examinations.

The State Board of Education also informed the Legislative Auditor’s Office that it plans to begin certifying medical professionals who have not completed degrees in athletic training. These professionals would include physicians, emergency medical technicians and registered nurses. They will attend a day-long seminar on athletic training prior to their employment during the football season.

The educational background required by the State Board of Education is similar to that required by NATABOC. In order to be called a certified athletic trainer by NATABOC, an individual must successfully complete the NATABOC examination. To be eligible to sit for the NATABOC examination, individuals must have completed a bachelors degree from an Athletic Trainers Education Program (ATEP), which is accredited by the Commission on

Accreditation of Allied Health Education Programs (CAAHEP) or another agency that accredits ATEP's. A certified athletic trainer must earn 80 Continuing Education Units (CEUs) every three years. Evidence of CEUs and a Cardio-Pulmonary Resuscitation (CPR) Certification must be submitted to the NATABOC to maintain certification.

NATABOC now requires a bachelors degree in athletic training in order to be eligible for certification, which is the same level of education that would be required by the Applicant's proposed licensure board. The proposed board would require NATABOC certification as a condition of licensure.

NATABOC has recently tightened the educational qualifications for athletic trainers it certifies. Prior to January 2004, it was possible for athletic trainers to be eligible for certification through the completion of an internship program. This program has been discontinued. NATABOC now requires a bachelors degree in athletic training in order to be eligible for certification, which is the same level of education that would be required by the Applicant's proposed licensure board. The proposed board would require NATABOC certification as a condition of licensure.

Applicant's Second Argument Is Diminished by Low Risk of Harm

The Applicant points out in its Sunrise application that the only disciplinary action currently available to NATABOC or the State Board of Education is to revoke an individual's certification. This does not address the problem of uncertified practitioners. NATABOC is also limited in its legal recourse against its certified practitioners if such action were necessary. The primary role of a state licensure board is to regulate certified practitioners engaged in a particular profession. The board's enabling statute would prohibit an unlicensed individual from practicing, but the board could not take legal action. Taking legal action is an option available to individuals, at present, if they feel harmed by unqualified or uncertified athletic trainers.

The enabling statute for a proposed board for athletic trainers would prohibit an unlicensed individual from practicing, but the board could not take legal action. Taking legal action is an option available to individuals, at present, if they feel harmed by unqualified or uncertified athletic trainers.

Question #12 on the Sunrise Application asks:

Within the usual practice of this occupation, document the physical, emotional, or financial harm to clients from failure to provide appropriate service or erroneous or incompetent service?

The following is the Applicant's response to this question:

At the present time, in the state of West Virginia, the NATA and the NATABOC currently have no legal remedies against someone practicing without a license or practicing improperly. The NATABOC can revoke certification, but cannot take any legal action. The only legal action that

Some of these lawsuits occurred in states that had some form of state regulation. Therefore, the existence of a licensure board for athletic trainers will not preclude the need for the public to file lawsuits against an athletic trainer (licensed or unlicensed) if monetary damages are sought.

can be taken by either the NATA or the NATABOC against an individual is licensure. They listed one case out of Tennessee in which the state was found negligent in causing the student football player's permanent injuries, and awarded a monetary judgment in favor of the student. An overview reported that the student player during two different practices became unconscious. After the first episode the university's athletic trainer never informed hospital doctors of the student's neurological conditions he observed, and then never informed the team physician of the student's frequent headaches prior to the second episode. The court affirmed the final order that held the state and its athletic trainer breached a duty to exercise reasonable care with regard to the student and that breach proximately caused the student's injuries.

Actual documented lawsuits of negligence appeared to be uncommon in the profession at the national level. At the national level, Legislative Services identified 24 published lawsuits filed against athletic trainers since 1971, none of which were filed in West Virginia. Some of these lawsuits occurred in states that had some form of state regulation. Therefore, the existence of a licensure board for athletic trainers will not preclude the need for the public to file lawsuits against an athletic trainer (licensed or unlicensed) if monetary damages are sought. The existence of a licensing board in West Virginia will not eliminate improper licensed activities, and it would be limited to revoking licenses, issuing fines or entering into consent agreements, which is currently available from the state and national regulatory entities. With respect to unlicensed activities, a Chapter 30 licensing board generally is not granted authority to issue cease and desist orders. Consequently, licensing boards generally have limited legal resources with respect to unlicensed activities. The lack of an observable pattern of unlicensed practices in West Virginia does not indicate the need for additional legal protection. Furthermore, the additional cost to establish a licensing board to address the rare occurrences of unlicensed practices in West Virginia outweigh the additional benefits to the public.

A Low Level of Risk to Public Safety Exists From NATABOC Or State Board of Education-Certified Athletic Trainers

During March 2004, the Legislative Auditor's Office contacted NATABOC to obtain data on complaints and disciplinary actions taken against athletic trainers certified in West Virginia for the previous five years. NATABOC

reported only two complaints during that period. One complaint dealt with an individual who misrepresented himself as being certified and the other complaint resulted in the revocation of certification for non-payment of certification fees in 2001. Neither of the complaints dealt with negligent actions taken by athletic trainers in the course of their duties. These data also illustrate that complaints against individuals misrepresenting themselves as certified are uncommon. **Clearly, a low risk of danger to public safety exists from NATABOC certified athletic trainers.**

Data suggests that complaints against individuals misrepresenting themselves as certified athletic trainers are uncommon. Clearly, a low risk of danger to public safety exists from NATABOC certified athletic trainers.

Currently, complaints against athletic trainers are filed with NATABOC or the local school, depending on which entity certified the athletic trainer. The decentralized regulation of athletic trainers in West Virginia presented the Legislative Auditor's Office with data collection problems that made determining the number of complaints against state-certified athletic trainers impossible. The State Board of Education does not collect data on the total number of complaints filed against state-certified athletic trainers, because complaints do not reach that level unless they are of a serious nature. School districts do not collect these data either. The Legislative Auditor was, therefore, unable to determine the total number of complaints filed against athletic trainers employed by schools. The State Board of Education reported only one disciplinary action that led to the revocation of certification during the five-year period. Less serious complaints and disciplinary actions are handled by local boards of education. **The identification of only one case of revoked certification indicates that there is a low risk of danger to public safety from state-certified athletic trainers.**

The Applicant plans to operate the board out of the office of the lobbying firm currently employed by the West Virginia Athletic Trainers' Association. This presents the possibility of a conflict of interest for a regulatory agency, which should be focused on regulating the profession to ensure public safety, not serving as its advocate. Operating out of the office of another entity would also present a public access problem, since the board's location may not be clearly visible.

The New Licensure Board May Not Be Financially Viable and the Planned Location of Its Office Would Lack Accessibility to the Public and Might Create a Conflict of Interest

The proposed licensure board would have a relatively small number of licensees (estimated 225) and estimated gross revenues of \$13,500 for the board's first year of operations and \$11,250 for its second year. This does not appear to be enough revenue to enable the board to have its own office. The Applicant plans to operate the board out of the office of the lobbying firm currently employed by the West Virginia Athletic Trainers' Association. The new board would have a single part-time employee, and a secretary, also provided by its lobbying firm. This presents the possibility of a conflict of interest for a regulatory agency, which should be focused on regulating the profession to ensure public safety, not serving as its advocate. Operating out of the office of another entity would also present a public access problem, since the board's location may not be clearly visible.

The Level of Additional Protection to the Public That a New Board Would Provide Does Not Justify the Additional Fees That Would Be Paid By Licensees

The creation of a new licensure board would require athletic trainers to pay an additional fee in addition to NATABOC's certification fees. Table 2 lists fees paid by athletic trainers.

Table 2 Certification, Professional and Proposed Licensure Fees Paid by Athletic Trainers in West Virginia	
Organization	Fee
NATABOC	\$35: Application fee for NATA members/\$60 for non-NATA members \$275: Exam fee for three-part exam \$40: Annual certification fee
State Board of Education	\$15: Certification or authorization fee paid every three years for NATABOC members or graduates from a state-approved program. *\$15: Annual fee for Full Time Permit employment and for limited athletic trainers
Proposed Licensure Board	\$60: Initial licensing fee \$50: Annual licensing fee after the initial year
<i>Sources: NATABOC, State Board of Education, West Virginia Athletic Trainers' Association</i> <i>* A full time permit employment consists of individuals who hold a bachelor's degree and have completed six semester hours of credit applicable to an approved athletic training program. Limited athletic trainers are for individuals such as doctors, chiropractors, physical therapists, nurses or Emergency Medical Technicians.</i>	

Table 2 illustrates that athletic trainers in West Virginia already have multiple fees associated with the practice of their profession. NATABOC membership costs \$40 per year with a \$60 application fee. Certification fees through the State Board of Education are only \$15 every three years for NATABOC members, as opposed to \$60 for the first year of the proposed licensure board's existence and \$50 annually thereafter.

Some athletic trainers would eventually pay fees to NATABOC, the State Board of Education, and to the new licensure board. Moreover, the Applicant’s proposed board would require licensees to be certified by NATABOC. Therefore, the proposed board would duplicate standards that presently exist. **A new licensure board would provide little additional protection to the public and duplicate current standards, therefore, the additional cost of licensure to athletic trainers is unwarranted at this time.**

Regulation By Other States

According to NATABOC, there are currently 32 states that license athletic trainers (see Appendix B). California, which has the largest number of NATABOC certified athletic trainers, does not yet license the profession, although legislation authorizing a study of the possibility is currently under consideration by the Legislature. Ten states have no form of regulation for the profession. Table 3 summarizes data contained in Appendix B.

Table 3			
Regulation of Athletic Trainers in the United States			
	Licensing	Certification*	Registration
Number of states with state-level regulation	32	5	2
*West Virginia has regulation, but only for athletic trainers who work in public school systems. Source: NATABOC and survey data collected by the Legislative Auditor’s Office.			

The Legislative Auditor’s Office surveyed the states that have licensure and obtained responses from 27 of them (North Dakota did not respond). The organization of licensure agencies varies from state to state. Some states combine the licensing of related professions under one agency. Of the respondents, nine states license athletic trainers through a related profession’s licensing board. This demonstrates that even if licensure is instituted by a state, it has the option of licensing athletic trainers through an existing licensure agency. Related professions can be licensed through the same board. Athletic trainers can be licensed through the state’s existing Board of Physical Therapy, for example. The Legislative Auditor’s Office identified Delaware, Arkansas, and Ohio as licensing athletic trainers through their physical therapy boards.

Since the year 2000, ten states (Arizona, Arkansas, Idaho, Nevada, Vermont, Connecticut, Kansas, Missouri, Virginia and Wisconsin) have instituted licensure. An additional twelve states instituted licensure during the 1990’s. Most states requiring licensure have begun doing so within the last 10

years. Though many states have instituted licensure in recent years, the decision to grant licensure appears to be based on concerns related to the possibility that uncertified athletic trainers, who lack the qualifications required by NATABOC, would be free to practice in the absence of a licensure board. This danger appears to be largely hypothetical in nature since data do not support the existence of a substantial problem with uncertified practitioners. The state of Washington has considered and rejected licensing athletic trainers, largely for this reason.

Since 1990, 22 states have instituted licensure for athletic trainers.

Conclusion

The Legislative Auditor's Office has been unable to identify a sufficient number of complaints and disciplinary procedures under the current NATABOC and State Board of Education certification programs to warrant the creation of a new licensure board. The Applicant's argument concerning unlicensed practices is largely hypothetical in nature and not based on documented or a significant threat to public safety in West Virginia. The existence of a licensure board would not eliminate improper licensed practices and the current regulatory entities are providing adequate protection for the public. A proposed board would have limited jurisdiction over unlicensed activity because generally Chapter 30 boards are not granted authority to issue cease and desist orders. The existence of a licensure board would not preclude the need for the public to file a lawsuit against an athletic trainer (licensed or unlicensed) if monetary damages are sought. Moreover, the Applicant's proposed board would require licensees to be certified by NATABOC. Therefore, the proposed board would duplicate standards that presently exist. The creation of a board would create additional costs to athletic trainers practicing in the state while providing little or no additional protection to the public. **Therefore, the Legislative Auditor determines that the cost of a new licensure board would outweigh any added benefits provided.**

A licensure board would not preclude the need for the public to file a lawsuit against an athletic trainer.

In addition, the proposed board would have a relatively small budget and may not be financially sound. To alleviate this potential problem, the Applicant proposes sharing the office space and resources of a lobbying firm which currently represents the Applicant. Experience from previous audits shows that such an arrangement would create public accessibility problems as well as a potential conflict of interest. The current certification systems in place in West Virginia appear to be adequate at this time.

Recommendation 1

The Legislature should consider not establishing a board to license athletic trainers.

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

August 5, 2004

Valerie W. Herzog, MEd, ATC
President, West Virginia Athletic Trainers' Association
754 Echo Road
South Charleston, WV 25303

Dear Ms. Herzog:

This is to transmit a draft copy of the Sunrise Report concerning the licensure of Athletic Trainers in the state of West Virginia. This report is scheduled to be presented during the October 10-12 interim session in Sheperdstown, West Virginia. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We would like to schedule an exit conference to discuss any concerns you may have with the report, during the week of August 16th-20th. We would appreciate your written response by September 13, 2004 in order for it to be included in the final report. If you intend to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Friday October 8th, 2004 to make arrangements. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/bb

Joint Committee on Government and Finance

Appendix B: State Level Regulations

Regulation of Athletic Trainers By State					
State	Year Effective	Type of State Regulation	NATABOC Certified	State Agency	License Application Fee
Alabama	1994	Licensure	457	Athletic Trainers	\$125
Alaska		Unregulated	43		
Arizona	2000	Licensure	501	Occupational Therapy	\$350
Arkansas	2001	Licensure	161	Board of Physical Therapy	\$100
California		Unregulated	1,954		
*Colorado		Unregulated	527		
Connecticut	2000	Certification	515	Commission of Public Health	\$150
Delaware	1992	Licensure	126	Examining Board of Physical Therapy	\$70
District of Columbia	1991	Mandated by School District	22	Board of Education	\$35
Florida	1995	Licensure	1,368	Department of Health	\$200
Georgia	1977	Licensure	721	Board of Athletic Trainers.	\$50
*Hawaii		Unregulated	152		
Idaho	2003	Licensure	169	Board of Medicine	\$120

State	Year Effective	Type of State Regulation	NATABOC Certified	State Agency	License Application Fee
Illinois	1985	Licensure	1,350	Department of Professional Licensing and Regulations	\$200
Indiana	1993	Licensure	847	Health Professions Bureau	\$25
Iowa	1996	Licensure	429	Professional License Bureau	\$100
Kansas	2004	Licensure	331	Board of Healing Arts	\$80
Kentucky	1978	Certification	327	Board of Medical Licensure	\$25
Louisiana	1985	Certification	267	Board of Medical Licensure	\$35
Maine	1996	Licensure	171	Office of Licensing and Registration	\$50
Maryland		Unregulated	456		
Mass.	1997	Licensure	810	Board of Allied Health Professionals	\$125
Michigan		Unregulated	1,094		
Minnesota	1999	Registration	592	Department of Health	\$100
Miss.	1991	Licensure	228	Department of Health	\$100
Missouri	2004	Licensure	534	Board of Healing Arts	\$100

State	Year Effective	Type of State Regulation	NATABOC Certified	State Agency	License Application Fee
Montana		Unregulated	126		
Nebraska	1987	Licensure	228	Department of Regulation and Licensing	\$150
Nevada	2003	Licensure	168	Board of Physical Therapy	\$250
New Hampshire	1997	Licensure	226	Board of Medicine	\$60
New Jersey	1994	Licensure	806	Board of Medical Examiners	\$70
New Mexico	1984	Licensure	140	Regulation and Examiners Licensing	\$100
New York	1992	Certification	1,304	Division of Professional Licensing	\$100
North Carolina	1997	Licensure	799	NC General Assembly	\$100
North Dakota	1983	Licensure	156	Athletic Trainers	\$50
Ohio	1991	Licensure	1,542	Occupational, Physical Therapy and Athletic Trainers	\$100
Oklahoma	1996	Licensure	260	Board of Medical Licensure	\$25
Oregon	1999	Registration	317	Health Licensing Agency	\$275

State	Year Effective	Type of State Regulation	NATABOC Certified	State Agency	License Application Fee
Pennsylvania	1977	Certification	1,861	Board of Medicine	\$20
Rhode Island	1983	Licensure	109	Department of Health	\$62.50
South Carolina	1984	Certification	372	Department of Health and Environmental Control	\$50
South Dakota	1984	Licensure	172	Board of Medical Osteopathic Examiners	\$100
Tennessee	1983	Licensure	548	Board of Medical Examiners	\$150
Texas	1971	Licensure	1,033	Department of Health	\$150
*Utah		Unregulated	290		
Vermont	2000	Licensure	111	Office of Professional Regulation	\$100
Virginia	2004	Licensure	887	Department of Health Professionals	\$130
Washington		Unregulated	514		
**West Virginia	1995	Mandated by School District	236	Board of Education	\$49
Wisconsin	2001	Licensure	700	Department of Regulation and Licensing	\$53

State	Year Effective	Type of State Regulation	NATABOC Certified	State Agency	License Application Fee
*Wyoming		Unregulated	40		

Sources: NATABOC and state regulatory agencies.

**The Legislative Auditor determined Colorado, Hawaii, Utah and Wyoming were unregulated states after research concluded they did not use either licensing, certification or registration as a means for regulation. NATABOC lists these states as regulatory because of exemptions for athletic trainers contained in these states for medical and physical therapy professions. However, although athletic trainers perform some procedures that are similar to what a doctor or physical therapist perform, athletic trainers are allowed to perform those procedures but are exempt from being regulated by the licensing boards for doctors and physical therapists.*

***NATABOC total (236) does not include 117 athletic trainers certified by the West Virginia State Board of Education. The initial application fee for West Virginia includes a \$15 initial processing fee and \$34 for a criminal background check.*

Appendix C: Agency Response

WV Athletic Trainers' Association (WVATA) Response to the Sunrise Report of the Performance Evaluation and Research Division (PERD).

RECEIVED
SEP 13 2004

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

Purpose, Introduction

This memorandum addresses PERD's principal finding that the public is adequately protected by existing certification organizations.

Contrary to the PERD finding, licensure of Athletic Trainers is urgently needed to protect the health, well-being and welfare of West Virginians. A majority of states have found that licensure is essential to protecting public health, and promoting safety. This is especially true among West Virginia's student athletes, who are exposed to life-changing risks of severe injury -- or even death -- every time they step out onto the field.

The WV Athletic Trainers' Association's Sunrise Application remains an integral part of this Response, and readers are encouraged to refer to the Sunrise Application to more fully acquaint themselves with the public policy issues involved.

However, to the extent that the Sunrise Application failed to set out this imperative in a clear and convincing manner to PERD, it is hoped that this Response will provide legislators with the information they need to support a much needed initiative.

Background

Americans are more informed and aware of general fitness and the need for physical activity than ever before. Over the past thirty years, America has experienced explosive growth in athletics and physical activity. Cable television, local and national sports networks, and the internet have exposed a wider audience to both local and international sports. This has also resulted in increased awareness of health related issues

and the advantages of participating in organized sports programs. The passage of Title IX (1972) enabled schools to begin offering equivalent sporting programs regardless of gender, causing participation levels to continually rise in interscholastic, intercollegiate and recreational settings.

With more individuals participating and competing, in sports and recreation, the activity and competitions are being played faster, harder and longer than ever before. This surge in competitive participation has highlighted the need for qualified professionals, capable of responding to the medical needs and concerns of the burgeoning physically active population.

Certified athletic trainers (ATC) have been widely recognized as an essential component in the allied health professions, specifically capable of maintaining the health and well being of active individuals. ATC's are well qualified -- academically and clinically -- to assess and rehabilitate injuries and illnesses resulting from physical activity.

Statutory Analysis I.

The unregulated practice of Athletic Training clearly harms and endangers the health, safety and welfare of the public, and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

The lack of state licensure in West Virginia places it and its citizens at a substantial risk of relying on unqualified, non-credential people representing themselves as health care professionals. In that 43 states presently regulate athletic trainers, West Virginia's lack of a licensing system also makes us vulnerable as a "dumping ground" for unqualified practitioners who have failed to qualify -- or had their licenses revoked --

elsewhere. As such, the threat to student athletes and physically active people at all levels is very real.

Licensure of the athletic training profession will better define the scope and limitations of athletic trainers, and eliminate public confusion over distinct occupational titles that may be perceived as interchangeable with athletic trainers in some settings (e.g., personal trainers, emergency medical technicians, physical therapists). School administrators, as well as student athletes and their parents, often enjoy a false sense of security when they fail to recognize the practical differences among these occupational titles. Creating licensure in West Virginia will provide strict legal role definition that directly protects the public. It enables West Virginia's practitioners to protect the integrity of their profession, as well those who rely on their competence, experience and training.

Further, enacting legislation now will extend to all West Virginians the protections now only offered in a limited way by the State Board of Education's process. In that this process is only applicable to primary and secondary education systems, it leaves higher education, recreational and non-profit community-based programs wholly unprotected.

Through the West Virginia Athletic Trainers' Association (WVATA's) three years of legislative initiatives in West Virginia, numerous examples have been cited in support of the proposition that the safety issues are tangible and very real. Here are just a few:

During the 2003 legislative session, Margaret Fillinger, the Head Athletic Trainer at Bethany College, was introduced and commended by the WV Legislature for her prompt actions which saved the life of a young student. A certified athletic trainer, Fillinger's years of professional experience and educational background

prepared her to appropriately evaluate and assess the student's symptoms. Her quick response resulted in STAT MED VAC transportation and life saving measures that were justified and executed immediately. A less qualified individual could have easily misdiagnosed or under-estimated the gravity of the situation.

Fairmont State College Head Athletic Trainer Bob Cable had just finished giving an interview for a story on athletic training when the cameraman asked him to look at an ulcer that had developed in his mouth. Cable was able to tell the ulcer was abnormal and told the individual to see a doctor as soon as possible. The ulcer, which was oral cancer, had spread to the jawbone and tongue. This man is alive today and fully credits Cable's referral as life-saving.

During the 2001 WVIAC Basketball Tournament, a student was seriously injured in a hit and run car accident in downtown Charleston, WV. Athletic trainers from WVIAC institutions were on the scene were able to prevent possible paralysis by stabilizing the student's spine while waiting for emergency transportation. In this instance, several well-intentioned passersby suggested moving or walking the victim but the certified athletic trainers remained in control and maintained the complex hands-on spine hold until paramedics arrived to transport the victim to the hospital.

During the 2000 WVIAC Basketball Tournament in Charleston, certified athletic trainer Amanda Allen of Concord College was present during a cheerleading practice in which a participant was tossed in the air and her teammates did not catch her. The cheerleader landed awkwardly and sustained a compound fracture of the tibia. Certified athletic trainers Herb Minch of West Liberty State College, Janet James-Bailey of Glenville State College and Amanda Allen were on location and immediately reacted to the student's injuries. The athlete was stabilized and was safely transferred to the local hospital. After surgery, which included the placement of a plate and pins, the student was able to return to school.

Certified athletic trainers are assets to society. With the reassurance of practical experience and education, ATC's make accurate evaluations, immediate responses in emergency situations, in addition to working with rehabilitation and injury prevention and they do it successfully everyday. The public needs to know, the person that calls themselves an athletic trainer is in fact a certified educated individual capable of dealing with critical medical issues requiring an emergency action plan.

The PERD report referred to the absence of lawsuits related to negligence within athletic training in West Virginia to support a finding of low risk of harm and insufficient need for a board. This finding should be reviewed in terms of the following:

- (1) The State Board of Education does not collect data on the complaints concerning state certified athletic trainers;
- (2) Similarly, school districts do not collect data on the complaints against athletic trainers (state certified or otherwise);
- (3) Lawsuit report data is likely confined to suits appealed to the West Virginia Supreme Court of Appeals, and further would not reveal (i) claims paid by insurers, (ii) claims settled out of court, (iii) cases where an individual defendant was dismissed from a broader suit, (iv) cases dismissed in their entirety, or (v) unsettled claims currently within the court system;
- (4) Citing a lack of lawsuits is not a sufficient predictor of future lawsuit potential when regulations are not in place to prevent malpractice by under-qualified or unqualified personnel in positions requiring the assessment and medical treatment of minors as well as other members of the public;
- (5) Under the current system, it is more productive to sue the school board that hired an incompetent or unqualified “trainer” because there are no standards of conduct that apply to the unregulated field.

Statutory Analysis II.

The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence of Athletic Trainers

A Certified Athletic Trainer (ATC) holds a four year degree from an accredited college or university has completed graduation requirements in a Commission on Accreditation of Allied Health Education Program (CAAHEP) athletic training program, passed the National Athletic Trainers’ Association Board of Certification, Inc (NATABOC) examination and is required to earn continuing education hours annually to maintain certification.

ATC’s are first responders trained in specialized skills and are able and qualified to make ‘return to play’ decisions. Programs presently in place to label individuals, who

have not completed the above criteria, as athletic trainers are not equivalently trained or qualified by education or by practice to perform the same tasks.

Athletic Training professional requirements, like that of other health care occupations are time-consuming educational achievements which cannot be conferred with on-the-job training, one-day training course or minimum of 6 hours of instructional time as mentioned in the PERD document.

Statutory Analysis III.

The public cannot be adequately protected by other means in a more cost effective manner, other than by licensure and regulation of the profession of Athletic Training.

The National Athletic Trainers' Association Board of Certification, Inc. (NATABOC) is a voluntary credentialing organization that is the recognized "gold standard" within the profession. Unless an organization or government agency requires the NATABOC as the standard, employers are free to employ any individual, qualified or not, to perform the duties of an athletic trainer.

By adopting this certification process as its standard, West Virginia need not administer a separate examination, while saving money and receiving the benefit of the industry's most trained and educated practitioners.

In unregulated states, individuals who cannot meet the NATABOC requirements can hold themselves out to the public without consequences. Licensure serves as a deterrent to uncertified athletic trainers moving into the state, and affords the highest level of protection to the public at nominal cost to the WVATA member.

NATABOC can only take action with regards to individuals who have earned NATABOC certification. If an individual is disciplined, the NATABOC would then

report to the appropriate regulatory agency having oversight for these professionals. The safety of West Virginia's children is not for sale, the creation of an Athletic Training Board provides protection at no cost to the state.

Financial Viability.

The state of West Virginia is not required to incur any cost of the proposed board.

ATC's, as any regulated health care practitioners, expect to pay a licensing fee. A \$60 initial fee and a \$50 annual fee each year following the initial has been proposed for each West Virginia ATC licensee (see Appendix A). This fee schedule provides West Virginia Athletic Trainers with the benefit of licensure at a cost within the lowest quarter (11 other states have equal or lesser fees—32 are higher) of the 43 states with existing regulation.

NATABOC fees listed in the PERD report are one-time fees associated with taking the NATABOC certification examination. State Board of Education fees become null if the payee is certified by the NATABOC. Calculating the cited examples of sharing fees with a board of 'joint association' presents a greater economic commitment and the inevitable double expense of multiple membership fees for individual members.

Adequate public accessibility to the board can be provided without utilizing any inappropriate appearance or associations. Freestanding lease arrangements with an ample signage provision have been developed through available universities and independent office space in the Charleston area (see Appendix B).

Summary Conclusion

In conclusion, licensure for athletic trainers is urgently needed to protect the health, well-being and welfare of physically active West Virginians. As one of only seven states without regulation, the unregulated practice of Athletic Training clearly harms and endangers the health, safety and welfare of the public and the potential for harm is easily recognizable. The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional and occupational competence of Licensed Certified Athletic Trainers. Presently, the public is not adequately protected by other means in a more cost effective manner. The state of West Virginia is not required to incur any cost of the proposed board. The legislature is urged to move forward on this very important legislative initiative.

Appendix A

Short Form Budget WVATA Board

The West Virginia Athletic Trainers' Association currently has a web site (www.wvata.org) that will contain several pages explaining licensure requirements as well as the licensure application. Adding this information to the website will cost approximately \$200.

Fee Structure for Licensure applicants:

First Year: \$60 (x 225 athletic trainers = \$13,500)

Renewal: \$50 (x 225 athletic trainers = \$11,250)

Annual Budget

	<u>First Year</u>	<u>Second Year</u>
Secretarial Support	\$6,000	\$6,000
Telephone	\$720	\$720
Office Expenses (supplies, postage, printing)	\$1,040	\$1,040
Website changes	\$200	\$200
Travel	<u>\$1,500</u>	<u>\$1,500</u>
TOTAL EXPENSE:	<u>\$9,460</u>	<u>\$9,460</u>
Fee Structure for Licensure Applicants:	<u>\$60 x \$225</u>	<u>\$50 x \$225</u>
TOTAL REVENUE:	\$13,500	\$11,250
Surplus:	\$4,040	\$1,790
	<u>Total 2 year Surplus \$5,830</u>	

Appendix B

Proposed Location of the WVATA Board

Contemporary Transcription Services, Inc. is an existing office that provides temporary or permanent office support as needed. Staffers are already in place and serve multiple clients. For our retainer, we will receive secretarial support including, but not limited to, answering our private phone line, filing, typing, answering basic questions, forwarding more complex questions to board members, answering e-mails, mailing applications, processing applications, and maintaining our files. Our retainer will also guarantee us sufficient file cabinet storage space for our publicly accessible files and adequate signage making the location of the Board's office clearly visible to the general public.

Contemporary Transcription Services, Inc. will store our files and records in a filing cabinet in their office. These files will be accessible to the public during the days/times listed below.

Physical Address: 2929 Pennsylvania Avenue
Charleston, WV 25302

Mailing Address: P.O. Box 12358
Charleston, WV 25302

Contacts: Linda Hunt
Joann Miller

Phone: 304-344-4868

E-mail: ctsinc@charter.net

Hours of operation: Monday through Friday 8am-5pm

Secretarial Support will be provided by:

CTS Expense:
\$500/month retainer
\$60/month phone line (at CTS)
\$45/month postage (estimate)