

BACKGROUND PAPER FOR HEARING

January 6, 2005

PROPOSAL FOR THE REGULATION OF ATHLETIC TRAINERS

JOINT COMMITTEE ON BOARDS, COMMISSIONS, AND CONSUMER PROTECTION

Senator Liz Figueroa, Chair

SUBJECT: SHOULD CALIFORNIA ESTABLISH A LICENSING PROGRAM FOR ATHLETIC TRAINERS?

SUMMARY: Consideration of the issues and facts regarding the need for the establishment of athletic trainer regulation in California.

Existing state law:

- 1) Licenses and regulates Physical Therapists under the Physical Therapy Board of California, and defines the practice of physical therapy as the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and to include physical therapy evaluation, treatment planning, instruction and consultative services.
- 2) Establishes MBC to license and regulate physicians and surgeons.
- 3) Establishes a Physician Assistant Committee of MBC, consisting of nine members, of which one must be a physician member of MBC, four must be physician assistants, and four must be public members, with the Speaker of the Assembly and the Senate Rules Committee each appointing one of the public members. The Governor appoints the remaining seven members. The

Physician Assistant Committee issues licensure certificates and is responsible for disciplining licensed physician assistants.

- 4) Requires, in the Government Code, prior to consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional, that a plan for the establishment and operation of the proposed board or category of licensee be developed by the author or sponsor of the legislation, and requires the plan to include specified information.

BACKGROUND

In 2002, AB 2789 (Lowenthal) was introduced to create an Athletic Trainer Examining Committee within the Medical Board of California (MBC) to certify and regulate the profession of athletic training, as defined. The legislation was introduced on behalf of the California Athletic Trainers Association (CATA), which stated that although state universities mandate that an athletic trainer be present for athletic practices and contests, and the Department of Education requires either a licensed physician or a certified athletic trainer to be present at varsity high school football games, a new interpretation of protocol created a new threat. According to CATA, as quoted in the Assembly Health Committee analysis of AB 2789, some schools have said that a physician could no longer provide orders to an unlicensed medical professional. Because athletic trainers work under a supervising physician, CATA stated that this threatened the viability of athletic trainers as providers.

AB 2789 was amended to require the Department of Consumer Affairs to initiate a review of the need for the licensing of athletic trainers, and to direct that an occupational analysis of persons providing athletic training services be conducted. The amended bill required the Department to submit a report to the Legislature by January 1, 2004 with the results of its review and occupational analysis, and a recommendation as to whether the state should license and regulate athletic trainers. However, AB 2789 failed on the Assembly Appropriations Committee suspense calendar.

A second bill was introduced the following year, AB 614 (Lowenthal, 2003), with language very similar to AB 2789's provisions to license and regulate athletic trainers via the creation of a new committee within the MBC. Just as was done with AB 2789, AB 614 was amended to require the Department of Consumer Affairs to conduct a review and occupational analysis of the profession, but after

passing the Assembly, the bill was referred to the Senate Business and Professions Committee, where no further action was taken on the bill.

While pursuing licensure in the Legislature, in compliance with the sunrise requirements for new professions seeking licensure, CATA completed the “Sunrise Questionnaire” in support of its case for regulation of the profession of athletic training. With the sunrise questionnaire submitted, the question of whether athletic trainers should be regulated, and in what form, is now properly before the consideration of the Joint Committee.

ATHLETIC TRAINING

The National Athletic Trainers’ Association defines athletic training as:

The practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries under the direction of a licensed physician, osteopath, podiatrist, or chiropractor. However, in a clinic accessible to the general public, the term means practicing athletic training only upon the referral and order of a licensed physician, osteopath, podiatrist, or chiropractor. The term includes the following:

- 1) Practice that may be conducted by an athletic trainer through the use of heat, light sound, cold, electricity, exercise, rehabilitation, or mechanical devices related to the care and the conditioning of athletes.
- 2) The organization and administration of educational programs and athletic facilities.
- 3) The education and the counseling of the public on matters related to athletic training.

Only those trainers who have been certified by the National Athletic Trainers’ Association Board of Certification (NATABOC) are permitted to use the terms “certified athletic trainer” or “athletic trainer, certified.” NATABOC certifies athletic trainers who have met the qualifications and passed a national written examination. To sit for the exam, applicants for certification as an athletic trainer must have completed a bachelor degree program in an athletic training educational program accredited by the Commission on Accreditation of Allied Health Education Programs. According to CATA, there are currently 12 accredited entry level athletic training education programs in California, as well as one graduate level program. There are an additional six entry-level programs in candidacy for

accreditation. Most of the accredited programs are in the California State University system.

There are currently about 2200 certified athletic trainers in California. In addition, according to CATA, within California there is a small group known as the American Athletic Trainers' Association that is comprised of trainers that have not received certification from the NATABOC.

The majority of certified athletic trainers in California are employed in school settings, with four-year colleges and universities employing about 260, about 128 in community colleges, and 227 in high school settings. Professional sports team employ another 75, with clinics (150), hospitals (72) or industrial settings (150) employing the rest.

According to CATA, 38 states license or otherwise regulate the practice of athletic training, with another 3 providing for an exemption from the medical practice act for the practice of athletic training.

NEED FOR ATHLETIC TRAINER LICENSING

According to CATA, the primary reason for licensure of any group is to protect the public from harm. Although athletic trainers work in many different locations and settings, many in California work in high schools and youth sports. It is important that we particularly protect the health and wellness of our children. CATA states that it is important to protect the general public from individuals who hold themselves out as an athletic training professional when they are not. In California in particular, CATA states there is vast public confusion between athletic trainers and personal trainers. Athletic trainers are allied health care professionals with at least a bachelor's degree and national certification. Personal trainers focus on exercise and fitness, and there is no degree requirement. CATA argues that there needs to be a method of accountability for individuals who are or call themselves Athletic Trainers. Currently an athletic trainer can have their certification revoked by the national professional certification body, but there would be no consequences in California. There is no deterrent for an unqualified person to practice in this medical field.

CATA states that because California does not currently regulate athletic training, there have been no documented cases of harm done by those holding themselves out as practicing athletic training. CATA argues that increased risk for physical harm and death may result from unqualified or unethical individuals practicing

athletic training. CATA states that this application for licensure is based on the premise that rehabilitation and prevention of injuries related to physical activity takes a required level of education and training to perform competently and safely. Just as California regulates the level of education for physical therapists, paramedics, emergency medical technicians, occupational therapists, and dental hygienists, and sets minimal standards of practice, CATA states it is also appropriate for certified athletic trainers to have the benefit of such regulation. According to CATA, the profession of athletic training is one of the last allied health professions to remain unlicensed by California, increasing the ability for dangerous medicine practices to continue under the guise of athletic training.

Again, one of the initial reasons given for the introduction of licensing legislation for athletic trainers was the recent change in practice protocols that prevented physicians from supervising non-licensed medical professionals. Because athletic trainers work under the supervision or direction of physicians, this suddenly put in question the employment of athletic trainers in numerous settings. This was at least partially overcome by some employment entities hiring an intermediary that the physician was able to supervise, who in turn directed the athletic trainer. CATA stated that this made it much more expensive to hire athletic trainers, and place many jobs in jeopardy.

An additional reason for licensure, especially as an allied medical professional, is the fact that most 3rd party payors (private insurance companies, Medicare, etc.) will only reimburse costs for care provided by licensed professionals. Health plans generally only include licensed health professionals on their provider panels.

SCOPE OF PRACTICE

AB 2789, prior to being amended to require an occupational analysis, proposed to define “athletic training” as the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of injuries provided to a physically active person under the supervision of a licensed physician and surgeon, osteopathic physician and surgeon, podiatrist, or chiropractor. The proposed legislation specified that this practice included the following:

- a) The use of heat, light, sound, cold, electricity, exercise, rehabilitation, or mechanical devices related to the care and the condition of a physically active person;
- b) The organization and administration of educational programs and athletic facilities; and

- c) The education and counseling of the public on matters related to athletic training.

According to CATA, the standard of practice for athletic trainers require them to work under the direction of a physician, and it can be problematic for physicians to supervise medical professionals that are not licensed by the state. Therefore, hospital rehabilitation departments and rehabilitation clinics are unable to allow certified athletic trainers to practice to their full capabilities because they do not have a license. This problem is one of the driving considerations for athletic trainers seeking licensure.

The licensed profession of physical therapy would perhaps overlap the most with the proposed scope of practice for athletic trainers. Physical therapy is defined in law as:

“The art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services.”

When both AB 2789 and AB 614 were being considered by the Legislature, the California Physical Therapy Association raised concerns that the types of individuals, injuries and locations of practice proposed for athletic trainers was too broad, and argued that athletic training scope of practice should be more specifically limited to athletic participants at an athletic training facility or on the site of an athletic practice or competition.

QUESTIONS

- 1) Does the profession of athletic training meet the threshold for licensure (the potential for serious injury or death, or severe financial harm)?

When considering the establishment of a new licensure category, the standard for those seeking licensure is whether the unregulated profession poses a serious threat to the public health and safety, or can cause severe financial harm. Otherwise, licensure merely for the sake of licensure can create an unnecessary barrier to entry into the profession. In the past, some professional

licensing boards have had a tendency to be driven by the interests of the profession, rather than the public interest, and the sunset review process was developed as a check against this tendency, and to periodically re-evaluate the need for licensure in the first place for every profession.

In the information provided by CATA, there was no documentation of injury imparted by unqualified or negligent athletic trainers. While CATA argues that the student athletes and others are demonstrably safer when an athletic trainer is on the field, which is no doubt true, this is an argument for employment, not licensure. While CATA argues that the public would be assured of competence in these professionals if they were licensed and regulated by the state, as other allied health professionals are, it is unclear whether there is any reason to believe that athletic trainers are currently posing any threat due to their unregulated status.

- 2) Why is the existing system of self-regulation by a private certification organization no longer sufficient to protect the public and ensure competent practitioners?

In the case of athletic training, it would appear in the documentation provided by CATA that private certification organizations have done an admirable job in self-regulating this profession. No one is allowed to sit for the certification examination without having graduated from an accredited four-year athletic training educational program, and the certification that is awarded is apparently recognized throughout the United States as the only legitimate certification for athletic trainers. This undoubtedly has a significant effect in the marketplace: unlike some professions where there is an alphabet soup of accrediting organizations, and the public is at a loss to figure out which ones are of value, it seems that if one is a “certified athletic trainer” anywhere in the United States, including California, then the public can be confident that he or she has met the nationwide standards of minimum competency.

- 3) Is licensure the appropriate next step? For instance, given the significant educational requirements (accredited bachelor degree programs) along with an accredited national examination, why wouldn't title protection for the term “athletic trainer” be sufficient public protection?

CATA rightfully points out that there is nothing anyone can do to prevent someone from holding themselves out as practicing athletic training, as long as

they do not use the term “certified.” Even if someone was once certified, but had their certification revoked by the NATABOC for ethical or professional reasons, the state could not prevent this individual from continuing to practice in the field of athletic training. However, both of these instances could at least be partially addressed by enacting a “title protection” statute that would prevent anyone from holding themselves out as an “athletic trainer” or any derivation of that term, unless they held a NATABOC certification or equivalent.

- 4) If athletic trainers should be licensed, is the Medical Board of California the appropriate home for an Athletic Trainers Examining Committee?

In both AB 2789 and AB 614, it was proposed that athletic trainers be regulated by an Athletic Trainers Examining Committee that would be placed under the Medical Board of California, similar to the Physician Assistant Committee of the Medical Board. With only 2200 certified athletic trainers in California, CATA acknowledges that it probably does not have enough members to support their own board without exceedingly expensive licensing fees. Because athletic trainers work under the direction of physicians, CATA indicates that the Medical Board of California is the natural location for the committee to be housed.