

CARE CONFERENCE

Compliance and Regulatory Education:
Best Practices for Athletic Trainer Regulation



Regulatory Enforcement

Disciplinary Best Practices
The Regulators Role in Wellbeing
Top Recent Regulatory Cases

July 15, 2022
8:15am – 12:30pm
Omaha, NE



BOARD OF CERTIFICATION
FOR THE ATHLETIC TRAINER

Welcome

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Moderator, Panelists, Presenters

- Dale Atkinson
- Mark Brengelman
- Hollie Kozak
- Bruce Bronoske
- Tim Kolb



What's in store.....

Disciplinary best practices
Panel discussion
BREAK (10:30am-10:45am)
The Regulator Role in Wellbeing
Top Cases

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Our Role:

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What's in store.....

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Your role.....

Participate

Panelists are encouraged to participate with sighs, coughing fits, facial expressions, or other disruptive actions intended to bring attention to a point made that is in need of debate.....



You may be called upon!!!



What's in store.....

Your role.....

Issue identification

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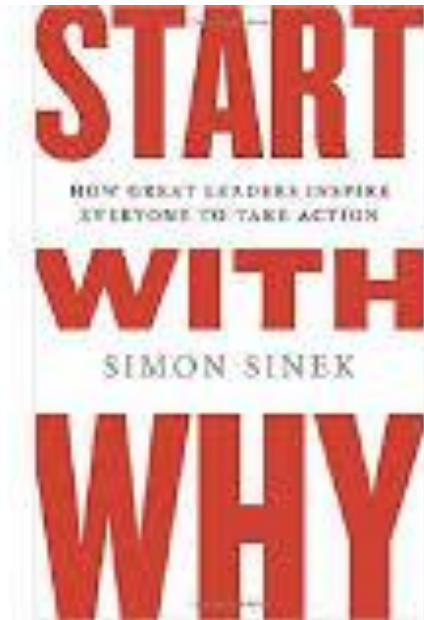
Terminology

- License
- Certification
- Registration
- Statute
- Rule/regulation
- Policy
- Due process



Why Government?

- In order to effectuate best practices in enforcement and discipline, let's start from the beginning.....



Why Government?

- In order to effectuate best practices in enforcement and discipline, let's start from the beginning.....

**Public
protection**

Why Government?

- In order to effectuate best practices in enforcement and discipline, let's start from the beginning.....

Ultimate equalizer



Why Government?

- In order to effectuate best practices in enforcement and discipline, let's start from the beginning.....

Mandate
Standards in law
Uniform enforcement
Property interest
Creates rights for all
Due process
APA

What do Boards of Athletic Trainers do?



What do Boards of Athletic Trainers do?

- Carry out the intent of the legislation

Enforcement: Disciplinary action

- **Complaint**



Enforcement: Disciplinary action

- **Complaint**

- Anonymous?



Enforcement: Disciplinary action

- # Complaint

- Anonymous?



- *Do not summarily dismiss complaints that are anonymous!*
- *Perhaps severity of allegations is relevant.*

Enforcement: Disciplinary action

• Complainant

- *Do not summarily dismiss complaints that are anonymous!*
- *Communication is key!*
- *Role of board*
- *Process followed*
- *Length of time*
- *Ultimate disposition*

Enforcement: Disciplinary action

- **Complaint**

- Process
- Acknowledgement
- Initial determination



Is the complaint within the scope of Board authority?

Enforcement: Disciplinary action

- **Complaint**



Is the complaint a public record subject to disclosure or publication?

Enforcement: Disciplinary Actions

- Next steps...
 - Notice to accused/respondent
 - ***Due Process***

Enforcement: Disciplinary Actions

- Next steps...
 - Notice to accused/respondent
 - ***Due Process:***
 - ***Notice,***
 - ***Right to be heard,***
 - ***Fair and impartial decision-making body.***

Enforcement: Disciplinary Actions

- Next steps...
 - Notice to accused/respondent
 - When sent?
 - What is included?

Enforcement: Disciplinary Actions

- Next steps...
 - Dedicate resources
 - Investigation

Enforcement: Disciplinary Actions

- Next steps...
 - Dedicate resources
 - Investigation
 - Involve legal counsel
- ***Delegation of authority***
 - ***Legislature to board via statute***
 - ***Board to staff via policy***

Enforcement: Disciplinary Actions

- Next steps...
 - Determination to administratively prosecute
 - *Involvement of counsel*

Enforcement: Disciplinary Actions

- Next steps...
 - Negotiations
 - *Involvement of counsel*

Enforcement: Disciplinary Actions

- Next steps...
 - Negotiations
 - Sanction options



Enforcement: Disciplinary Actions

- Next steps...
 - Negotiations
 - Sanction options
- *Fines, Costs, Reprimand, Suspension, Revocation, Limited practice, CE, Competence determination, Mental health evaluation, Impairment program, etc....*

Enforcement: Disciplinary Actions

- **What is revocation?**



Enforcement: Disciplinary Actions

- What is revocation?
- Differentiate from suspension.



Enforcement: Disciplinary Actions



- What is the burden of proof in an administrative action?

Enforcement: Disciplinary Actions



- What is the burden of proof in an administrative action?
- *Preponderance*
- *Clear and convincing*
- *Balance of probabilities*

Enforcement: Disciplinary Actions

- Elements of a final order:
 - *Findings of fact*
 - *Conclusions of law*
 - *Burden of proof*
 - *Sanctions (w/specificity)*
 - *Reinstatement rights (if any)*
 - *Publicity*
 - *Right to appeal**

Enforcement: Disciplinary Actions

- Elements of a final order:
 - *Findings of fact*
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 - *Publicity*
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Admission of wrongdoing

Enforcement: Disciplinary Actions

- Elements of a final order:
 - *Findings of fact*
 - *Conclusions of law*
 - *Burden of proof*
 - *Sanctions (w/specificity)*
 - *Reinstatement rights (if any)*
 - *Publicity*
 - *Right to appeal**

Admission of wrongdoing

Think of future decisions and board members

Think of fellow regulatory boards, both intra and interstate

Enforcement: Disciplinary Actions

- **Publicity**
 - When to publish?



- (Note: Does not say “if” to publish)

Enforcement: Disciplinary Actions

- **Publicity**

- When to publish?

- *As soon as final and until a court orders you otherwise.*

Enforcement: Disciplinary Actions

- **Publicity**
 - Where to publish?



Enforcement: Disciplinary Actions

- **Publicity**

- Where to publish?

- *Website, Facebook, newsletter, elsewhere....social media*

Enforcement: Disciplinary Actions

- **Post-sanction enforcement**
 - Now what?



Enforcement: Disciplinary Actions

- **Post-sanction enforcement**
 - Now what?
 - *Collection of fines/costs, monitored practice, periodic reports, use of third party, court filings, unlicensed practice, more?*

Enforcement: Disciplinary Actions

- Issues identified
- Let's put this into action...

Scenario

For discussion and debate by panelists



Scenario

- *Athletic trainer A is duly licensed in State 1. A has been licensed for many years and has been employed by the athletic department at a State University in State 1. A works with athletes from multiple sports, both men's and women's. As part of an athletic trainer's responsibilities, A travels with the athletic teams to different states to engage in athletic training services.*

Scenario

In 2022, an anonymous complaint is received by the regulatory Board of State A alleging that A had engaged in appropriate sexual touching of the female complainant in the course of providing athletic training services to the student. The alleged inappropriate activities occurred over the course of 2 years from 2010 - 2011 and occurred in multiple states, including states 1, 2, 3, & 4 (while the athletic team was travelling).

Scenario

Shortly after receiving the anonymous complaint, the Board of State A received a second complaint that was signed by the complainant. This complaint was filed by a male student/athlete who alleged that A, in the course of providing training services, had engaged in inappropriate touching. These alleged events occurred from 2020 - 2021. A and the male complainant thereafter developed a consensual intimate personal relationship (after male student had graduated from the University) that lasted for several months. That relationship had recently ended.

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Disciplinary Best Practices Panel

Bruce Bronoske, Jr. – Program Manager
Washington State Department of Health



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The Regulators Role in Enforcement

- ▶ Ensuring public safety
- ▶ Implementation of legislation
- ▶ Rule writing
- ▶ Ensuring competency through development of licensing standards, including minimal education, examinations and continuing education requirements.
- ▶ Maintaining disciplinary processes and standardizing regulation of the athletic training profession.

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Bruce Bronoske, Jr.

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Disciplinary Best Practices Panel

Hollie Kozak, M.Ed, AT
Ohio AT Board Section - Enforcement



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The Mission of the Ohio OTPTAT Board

The mission of the Ohio OTPTAT Board is to actively promote and protect the health of Ohioans through effective regulation of the professions of occupational therapy, physical therapy, athletic training, orthotics, prosthetics, and pedorthics.



My Role on Enforcement

- ▶ Protect the public
- ▶ Determine if a violation occurred
- ▶ Protect the integrity of the profession (NOT the professional)

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Role During an Investigation

- ▶ Review the facts as laid out by our Board investigators
- ▶ Determine if more interviews need to be conducted to answer unanswered questions
- ▶ Determine if the witness(s) are credible
- ▶ Determine, if in fact, the athletic trainer violated our laws, code of conduct, etc.
- ▶ Work closely with the investigators and the Assistant Attorney General
- ▶ In some cases, determine if this also is a criminal act that we have a duty to report or turn over to the authorities

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Other Things to Keep in Mind During the Investigation

- ▶ Check yourself regarding any bias (conscious or unconscious)
- ▶ Athletic trainers, and other healthcare professionals, have influence over athletes, families and their patients
- ▶ As an athletic trainer, we understand there are scenarios where to the public, they may assume there is wrong doing and it is up to us to evaluate it, keep that in perspective, but not use it as an excuse (men in women's locker rooms, athletic trainers alone with a patient in a room)

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In The End...

- ▶ Whatever the decision, a precedent is set
- ▶ From here on out, the Board must be consistent in how the investigation and outcome was handled
- ▶ The penalty, if any, must be consistent
- ▶ Was there a violation?
- ▶ Maybe the decision is that he/she/they did not violate a law, rule or code of conduct in current state, but may also cause a change in a law, rule or code of ethics

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Effective Complaint Investigations and Disciplinary Actions

The devil is in the details; using best practices for effective complaint investigations and disciplinary actions in investigating complaints, writing statements of charges, and prosecuting or settling cases.

by

Mark R. Brengelman, JD, MA

Mark R. Brengelman, Attorney at Law, PLLC
Frankfort, Kentucky



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about Mark R. Brengelman

- Bachelor's and Master's Degrees in Philosophy from Emory University, Atlanta, Georgia
- Juris Doctorate from the University of Kentucky College of Law, Lexington, Kentucky
- Assistant Attorney General (retired) now in private practice since 2012 – switched sides



more about Mark R. Brengelman

Represents:

- Licensed professionals before state licensure boards and in other professional matters
- Parents and kids in confidential child abuse and neglect cases, termination of parental rights, and adoption proceedings
- Two government ethics commissions
- Ky Board of Veterinary Examiners



even more about Mark R. Brengelman

Continuing education including:

- Federation of Associations of Regulatory Boards and seven member clients

Mark helps:

- health care practitioners,
- kids/parents, and
- government agencies
navigate the law and ethics and make the rules understandable as applied to them



The complaint process

- Duty to report – do you have that, what does it say?
- Anonymous complaints – otherwise complaints are in writing, signed and dated (usually) and from any source
- Board-initiated complaint – when and how can the board start its own complaint?

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Complaint processing and investigation

- Are all complaints sent to the Respondent for a response?
- Pro-complainant vs. pro-Respondent – 2 ways of doing it
- At what stages are a licensee of your profession making the complaint decisions or doing the investigations?

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The investigation

- Investigations are the road map to the entirety of the case – either to settle or to have a contested, administrative hearing
- An investigation should obtain all the necessary witnesses and all the necessary documents

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Prosecuting disciplinary actions

- State clear allegations of “who, what, when and where”
- Follow administrative discovery – usually more like discovery in a criminal matter not a civil matter in court

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Settlement

- Use specific language with statutory authority by not allowing non-pejorative words pollute your disciplinary action – “retire” vs. “revoke”
- Label disciplinary action as “disciplinary action”
- Follow a model Settlement Agreement such as from FARB
- List clear deadlines, terms and conditions, and consequences (95% vs. 5 % of disciplinary action)

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Panelists Discussions



- Complaint
- Initial assessment
- Board authority determination
- Dedicated resources to investigate
- Investigation
- Administrative prosecution
- Defenses
- Final orders
- Sanction options
- Publicity/publication
- Post sanction enforcement
- Appeals

Standing Ovation for the Panelists



BREAK: 10:30am – 10:45am



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