

# 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

# CARE CONFERENCE



# Moderator, Panelists, Presenters

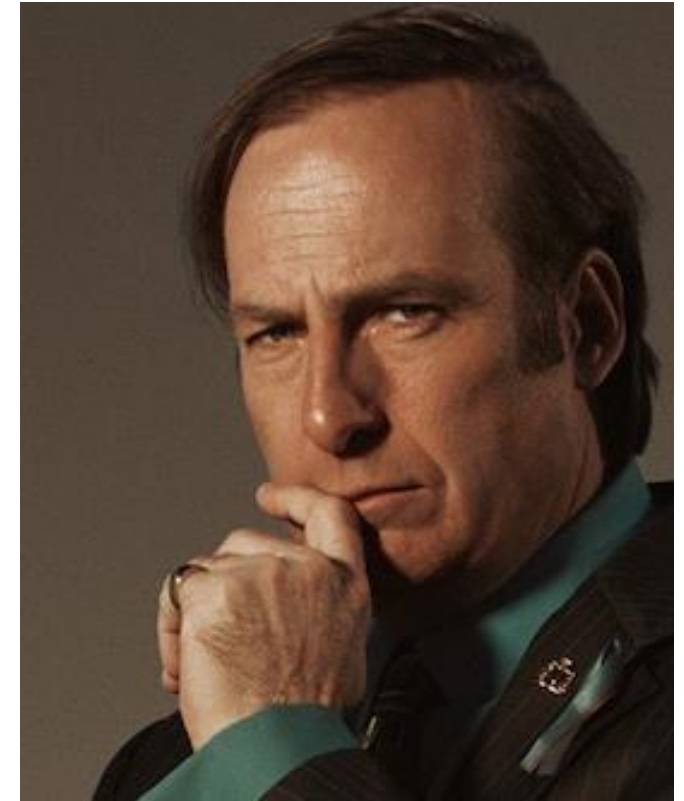
- Dale Atkinson
- Mark Brengelman
- Hollie Kozak
- Bruce Bronoske
- Tim Kolb



Dale Atkinson J.D.



- FSBPT
- AAVSB
- ASWB
- ARBO
- FSMTB
- ICFSEB
- NMTCB
- LEARN
- JRCERT
- NWRP
- JFCSF



That is not really me...

There may be a test on these acronyms



# Speaking of a test.....

- **Illinois Senate Bill 1632 (SB 1632)**
  - Legislation to eliminate use of entry-level competence examination for BSW.
  - Unanimously passed and signed into law in 119 days.
  - Introduced February 26, 2021
  - Signed June 25, 2021.
  - Effective January 1, 2022

**CARE**  
**CONFERENCE**

**Testing,  
testing....**

# What's in store.....

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

CARE  
CONFERENCE

Our Role:

shutterstock.com · 1888832689

# What's in store.....

# CARE CONFERENCE

## Your role.....participate

# Issue identification



No hesitation to speak up

# CARE CONFERENCE

Seek  
counsel





Theme

# Due Process Due

**SPEAK UP!!!**



# FAIRNESS

# CARE CONFERENCE

- Right to:
  - Notice
  - Be heard
  - Before a fair and impartial tribunal

Due  
process

# ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- Athletic trainer, violated standards, boundary violation, occurred in November/December 2012.
- NOTE: athletic trainer did not renew her license and it expired on December 31, 2012.
- Administrative complaint filed by State of IN
- September 2013 Board hearing, only lawyer for Respondent appeared.
- Board issued notice of default.
- January 2014, Board voted to find Respondent in default.
- Imposed suspension for at least 7 years.

# CARE CONFERENCE

# Due process & Immunity

# **Melton v. Indiana Athletic Trainers Board,**

156 N.E.3d 633 (App. Ct. IN 2020)

- Respondent filed a complaint before the trial court.
- She argued that proceeding by default violated her constitutional rights.
- She also sought damages under section 1983 action (violation of rights under color of state law).
- Trial Court dismissed the section 1983 action. (The appeal of the administrative action was dismissed for failure to timely file the record).
- The Court of Appeals found that proceeding under default was error as it deprived the Respondent of right to be heard.
- Vacated the Board order and remanded for a hearing consistent with due process.
- Thereafter, Trial Court awarded Respondent costs and attorney's fees of \$111,498.75. Paid by Board in December 2016.

# CARE CONFERENCE

## Due process & Immunity

## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- Following the Court of Appeals decision, the Board changed the status of the Respondent's license from "suspended" to "expired".
- This effectively returned the status of the Respondent's license to the status before the administrative proceedings.
- Why? (Likely to recognize the Court of Appeals ruling.)

# CARE CONFERENCE

## Due process & Immunity

## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- February 8, 2017, new hearing held.
- Respondent and attorney appeared.
- Respondent admitted to relationship, referred to it as consensual, embarrassing a mistake, she was lonely and naïve.
- March 27, 2017, Board found conduct to have violated Indiana law.
- Board placed Respondent's license on indefinite suspension for at least three (3) years.
- April 26, 2017, Respondent petitioned for judicial review.

# CARE CONFERENCE

## Due process & Immunity

## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- She alleged violations of her federal constitutional rights to due process.
- Named as defendants the Board, members of the Board in their official and individual capacities, and the IN Professional Licensing Agency (IPLA).
- Court and parties agreed that the section 1983 action and appeal of the administrative order were separate and distinct.
- Trial Court found the administrative order to be arbitrary and capricious, without support of substantial evidence, violative of free speech and equal protection.
- Reversed the Board administrative sanction.
- Court upheld summary judgment in favor of Board as to the section 1983 action.

# CARE CONFERENCE

## Due process & Immunity



## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- On April 16, 2018, the Board **again** changed the status of the Respondent's license from "suspended" to "expired".
- Why? (Again, likely to be consistent with status based upon the judicial reversal and remand).

# CARE CONFERENCE

Due  
process  
&  
Immunity

## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- Board appealed the reversal of the administrative sanctions.
- The Respondent appealed the summary judgment re the section 1983 action.
- Court of Appeals, in an extensive opinion, upheld the summary judgment in favor of the Board and other defendants in the section 1983 action. Immunity principles.
- Court of Appeals reversed the Trial Court and reinstated the Board order imposing sanction on the Respondent.

# CARE CONFERENCE

## Due process & Immunity

## ***Melton v. Indiana Athletic Trainers Board,***

156 N.E.3d 633 (App. Ct. IN 2020)

- Court of Appeals found that the procedures followed by the Board were consistent with the procedural and substantive due process requirements.
- Appropriate notice and opportunity to be heard. Procedural due process.
- Findings and sanctions supported by substantial evidence and consistent with authority and previous action by the Board. Substantive due process.
- No retaliation by Board under First Amendment argument.
- November 2012 activities resolved in September 2020

# CARE CONFERENCE

## Due process & Immunity

# Issues

- Procedural due process
- Substantive due process
- Suspension
- Costs/Attorney fees (assume the \$111K repaid by Respondent).
- Remand
- Retaliation
- Immunity
- Section 1983
- Angst of litigation
- Media attention

# CARE CONFERENCE

**SPEAK UP!!!**

**LICENSE EXPIRED**

# Dealing with a Lapsed License

By: Stefanie Cantu



LAPSED

LICENSE EXPIRED

CANCELLED



# *Indiana Board of Pharmacy v. Elmer*

171 N.E. 3d 1045 (App. Ct. IN 2021)

- Indiana Supreme Court affirmed the lower court and held that the Board of Pharmacy does not have administrative authority over an expired license.

CARE  
CONFERENCE

Expired  
license

# ***Kollar v. Board of Education of Harrison***

*2017 N.J. Super Unpub. LEXIS 1785*

- Superior Court of New Jersey affirmed finding of Commissioner of Education that athletic trainer not entitled to tenure.
- Athletic trainer worked from 2007 to 2013 with a certificate although such was a condition of employment.
- Petitioner (athletic trainer) qualified for the certificate but never obtained it.
- *Stated that she confused New Jersey certificate with that of the National Athletic Trainers Association.*

**CARE  
CONFERENCE**

**Employment  
Tenure**



# ***Nevada State Bd. of Massage Therapy v. Wright***

Court of Appeals of Nevada May 27, 2021, Filed No. 81542-COA

- Court of Appeals reversed lower court and held that a denial of an application for licensure as a reflexologist is not a contested hearing and thus not subject to appeal.

# CARE CONFERENCE

## Application denial

## Right to a hearing

# ***Burke v. Md. Bd. of Physicians***

Court of Special Appeals of Maryland April 28, 2021, Filed No. 0513,  
September Term, 2020

- Maryland Court of Special Appeals affirmed the lower court and upheld the revocation of a medical license based upon guilty pleas of multiple counts of improper prescribing of schedule II drugs. Court noted that because the criminal convictions involved matters of moral turpitude, the Board was not required to hold a formal hearing.

# CARE CONFERENCE

## Revocation

## Right to a hearing

# *Hynes v. Department of Health*

Commonwealth Court of Pennsylvania June 2, 2021

- Commonwealth Court of Pennsylvania reversed the Department decision to revoke an EMT license due to discovery of criminal convictions not disclosed on application for certification. Court held that mitigating circumstances deemed the Department decision to be unreasonable and reversed the revocation of certification.

**CARE**  
**CONFERENCE**

**Criminal  
history**

**Duty to  
disclose**

# ***Naina v. Oregon Medical Board***

Court of Appeals of Oregon June 16, 2021, Decided A172081

- Oregon Court of Appeals affirmed *permanent* revocation of licensure and a \$10K fine and assessment of costs of \$30K. Court rejected arguments that the licensee was entitled to appear at the hearing on remand to argue points already argued at the original hearing.
- Interestingly, the original sanction by the Board was referenced simply as “revocation”.

**CARE**  
**CONFERENCE**

**Right to  
appear**

**Permanent  
revocation**

## ***Maulthrop v. Connecticut State Board of Education***

Appellate Court of Connecticut May 19, 2021, Argued; June, 2021, Decided;  
Officially Released on the 29th of June, 2021. AC 43781

Appellate Court of Connecticut affirmed the lower court and upheld the revocation of both the initial educator certificate and professional educator certificate of a Principal of an elementary school based upon participation in adult interference-cheating through assistance of students on a statutorily mandated standardized test.

# CARE CONFERENCE

## Examination breach

# ***United States of America v. Tangtang Zhao,***

21 CR 505, Northern District of Illinois (filed July 2021)

Grand Jury indictment, pharmacist accused of selling fake  
COVID-19 vaccination cards

**CARE**  
**CONFERENCE**

**COVID**

# Washington DC

Requiring COVID vaccine as a condition of licensure and renewal. (Exemptions allowed based upon medical or religious reasons).

Due process???

CARE  
CONFERENCE

COVID

# Additional Legal Issues

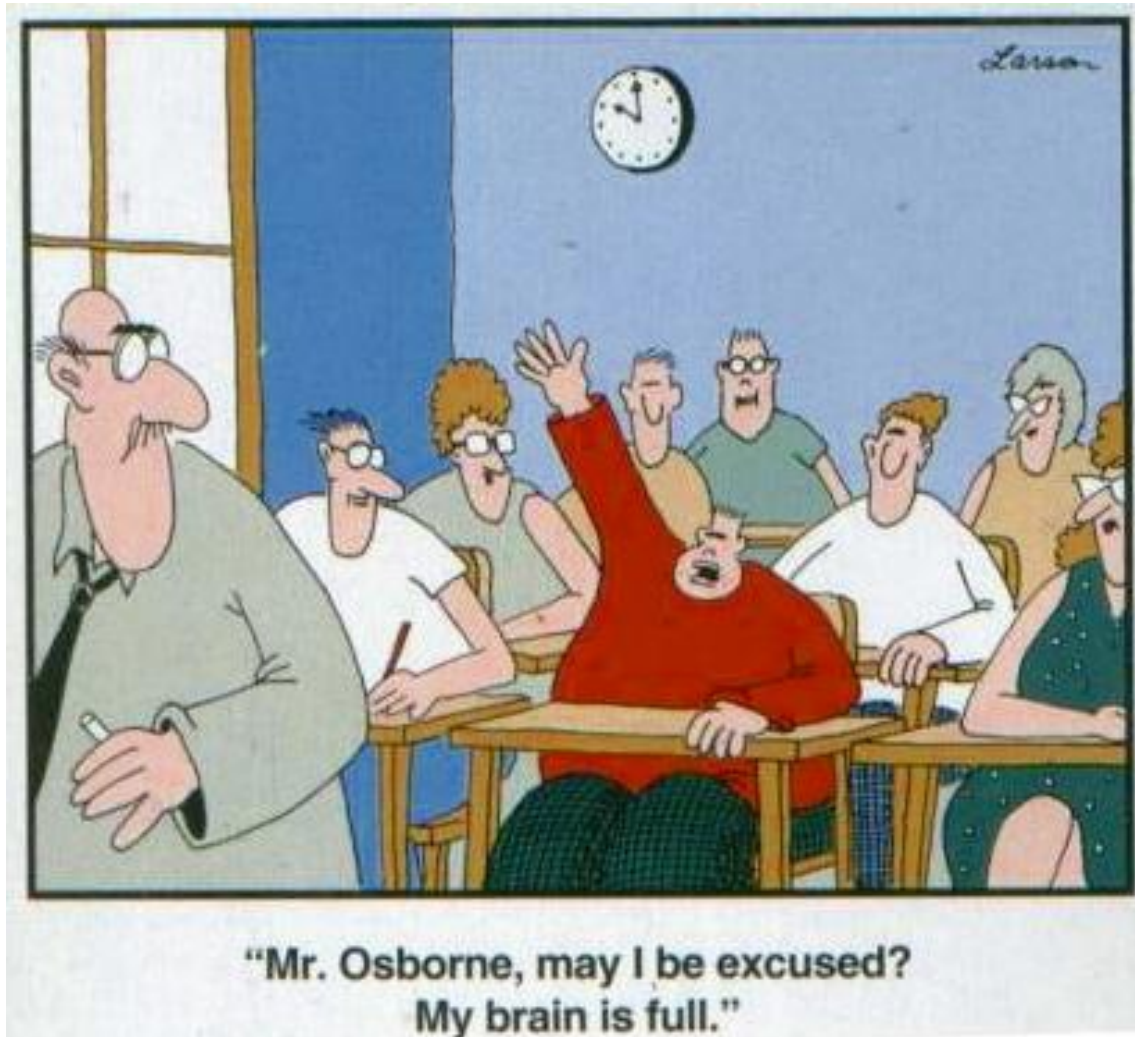
- Antitrust
- First Amendment
- Good Moral Character
- Second Chance Legislation
- Deregulation
- Board Composition

CARE  
CONFERENCE



# CARE CONFERENCE

Regulators  
rock!



# Regulators rock!

CARE  
CONFERENCE



**LUNCH: 12:30pm – 1:30pm**

# CARE CONFERENCE

