

**BRAD SHERMAN
REGULATORY CONFERENCE**
(formerly CARE Conference)
Compliance and Regulatory Education:
Best Practices for Athletic Trainer Regulation



Just Tape It

State of the State: Where are we in professional regulation?



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THANK YOU!!



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Who are you?



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ASWB
ASPPB
AAVSB
PSEP
PSMTB
FCLB
VCFSEB
JRCERT
NIC
NHTCB
LEARN

Minds Shared

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Me?



That's not really me...

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State of the State of
Professional Regulation

What do we know?

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What do we know?
What don't we know?

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What do we know?

What don't we know?

Why are athletic trainers and athletic training regulated?

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State of the State of Professional Regulation

Why does government regulate athletic trainers and athletic training?

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Why does government regulate athletic trainers and athletic training?

NRS 640B.003 Legislative declaration. The practice of athletic training is hereby declared to be a learned profession, affecting public health, safety and welfare, and subject to regulation to protect the public from the practice of athletic training by unqualified persons and from unprofessional conduct by persons who are licensed to engage in the practice of athletic training.
(Added to NRS by 2003, 896)



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What is a profession?
What is a learned profession?

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Why does the Board of Athletic Training exist?

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Why does the Board of Athletic Training exist?

To carry out the intent of the enabling legislation (practice act).

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What is a license?

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What is a certificate/certification?

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What is a registration?

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What is a good moral charcter?

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Legal Issues and Cases Relevant to Regulation

Should (can) government regulate the profession in the first place?



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Legal Issues and Cases Relevant to Regulation

Should government regulate the profession in the first place?

To understand the “should” and “why”, lets explore the why not.



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Legal Issues and Cases Relevant to Regulation

Intersection of multiple very complex legal issues.....



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Legal Issues and Cases Relevant to Regulation

- **Rational Basis Test...**
- Applies when scrutinizing Economic regulations, non-suspect classifications (age, wealth, disability, income, occupation), and police power regulations

Test: Rationally related to achieve a legitimate governmental interest

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Legal Issues and Cases Relevant to Regulation

Intermediate Scrutiny Test...

- Applies when scrutinizing laws that discriminate based on gender, sex, or marital status of parents; content-neutral speech restrictions

Test: Substantially related to an important government interest

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Legal Issues and Cases Relevant to Regulation

Strict Scrutiny Test...

Applies when scrutinizing.....restriction of a fundamental right (speech, religion) or discrimination of a suspect class (race, national origin, citizenship)

Test: Narrowly tailored to achieve a compelling governmental interest

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Legal Issues and Cases Relevant to Regulation

Should (can) government regulate the profession in the first place?

Craigmiles v Giles, 312 F. 3d 220 (6th Cir 2002)

Sixth Circuit struck down a Tennessee requirement that casket retailers had to obtain a funeral director's license to sell caskets. The court found that the law served no legitimate public purpose and was merely an unconstitutional way to protect funeral directors from economic competition. The court concluded that protecting funeral directors from competition had no **rational relationship to public health or safety.**

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Legal Issues and Cases Relevant to Regulation

Should (can) government regulate the profession in the first place? Political & Legal

Barbers
Cosmetology
Interior design
Dieticians
Florists
Massage therapy
Cable TV installers
AI?????
.....

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Legal Issues and Cases Relevant to Regulation

Speech vs. Conduct...huh?

“Congress shall make no law . . . abridging the freedom of speech.”

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Legal Issues and Cases Relevant to Regulation

Speech vs. Conduct

Edwards v. District of Columbia, 755 F.3d 996 (2014),
Court of Appeals for the District of Columbia invalidated under First Amendment scrutiny a regulation in the District requiring individuals conducting tours within the district to pay a \$200 licensing fee and pass a 100-question multiple-choice exam about historical sites.

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Legal Issues and Cases Relevant to Regulation

Speech vs. Conduct...huh?

Hines v. Pardue, 117 F.4th 769 (5th Cir 2024)
Court of Appeals for the Fifth Circuit found the State laws directly regulated a veterinarian's speech and failed to survive even intermediate scrutiny.

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Legal Issues and Cases Relevant to Regulation

Speech vs. Conduct

Chiles v. Salazar, 607 U.S. 627 (2026)

United States Supreme Court held that “talk therapy” constitutes speech and is subject to legal scrutiny under a First Amendment analysis.

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Legal Issues and Cases Relevant to Regulation

If a profession is scrutinized under a legal challenge, does such profession constitute speech?

Athletic training?

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Legal Issues and Cases Relevant to Regulation

Let's talk about the delegation doctrine...in the context of government regulation!



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