

To: College Athletic Trainers' Society

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Subject: Athletic Trainers' Legal Duties

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PRESENTATION

I. GENERAL OVERVIEW

- A. College athletic trainers may owe several legal duties to the athletes they treat and the schools by which they are employed.
- B. Failure to adhere to those legal duties may lead to civil liability on the part of the athletic trainer and his/her employer school under theories of negligence, under state statutes governing the profession, and under the various state and federal constitutions. *See Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3d Cir. 1993); *DiSalvio v. Lower Merion School Dist.*, No. CIV. A. 00-5463, 2002 WL 734343 at *1 (E.D. Pa. April 25, 2002); *Kennedy v. Syracuse Univ.*, No. 94-CV-269, 1995 WL 548710 at *1 (N.D.N.Y. Sept. 12, 1995); *Doe v. St. George's School*, CIV. A. No. 88-0676B, 1989 WL 125283 at *2 (D. R.I. May 30, 1989); *Hemphill v. Sayers*, 552 F. Supp. 685 (S.D. Ill. 1982); *Wallace v. Broyles*, 961 S.W.2d 712 (Ark. 1998); *Searles v. Trustees of St. Joseph's College*, 695 A.2d 1206 (Me. 1997); *Lennon v. Petersen*, 624 So.2d 171 (Ala. 1993); *Passinault v. Stoessner*, No. 237526, 2002 WL 31938897 at *1-2 (Mich. Ct. App. Nov. 22, 2002); *Espersen v. Buffalo County Pub. School*, No. A-99-462, 2000 WL 559011 at *1 (Neb. Ct. App. May 2, 2000); *Brennan v. Bd. of Trustees of Univ. of Louisiana Sys.*, 691 So.2d 324 (La. Ct. App. 1997);

Georgia Phys. Therapy, Inc. v. McCullough, 466 S.E.2d 635 (Ga. Ct. App. 1996); *Pinson v. State of Tennessee*, No. 02A01-9409-BC-00210, 1995 WL 739820 at *1 (Tenn. Ct. App. Dec. 12, 1995); *Jarreau v. Orleans Parish School Bd.*, 600 So.2d 1389 (La. Ct. App. 1992); *Capati v. Crunch-Fitness Int'l, Inc.*, 295 A.D.2d 181 (N.Y. App. Div. 2002).

- C. Athletic trainers are “agents” of the colleges and universities they work for. Therefore, their conduct may be imputed to the college or university.

1. Negligence

- a. There are five elements to a general negligence claim.
 - i. Duty – This legal obligation owed to another is determined according to a standard of care for a particular profession, which is usually phrased as “reasonable care under the circumstances.”

(1) Athletic trainers’ standard of care

 - (a) Athletic trainers must “conform to the standard of care required of an ordinary careful trainer” in exercising reasonable care for the health and safety of their athletes. *See Searles*, 695 A.2d at 1210.
 - (b) In litigation, athletic trainers will likely be evaluated in light of other licensed athletic trainers’ expert testimony. *See id.*
 - (c) Athletic trainers are held to a higher standard of care than coaches because the judgment about a physical or medical condition is outside the realm of common knowledge. *See id.*
 - ii. Breach of duty – Athletic trainers may breach their duty of care by improperly carrying out the duty owed to an athlete, or failing to carry out the duty altogether.

- (1) Examples of how athletic trainers may breach their legal duty of care may be taken from reported cases involving athletic trainers, several of which are discussed hereinafter.
- iii. Causation – The athletic trainer’s conduct must be a substantial factor in bringing about harm to the athlete and there must be no rule of law available to relieve the athletic trainer from liability based on the manner in which the harm resulted. *See* RESTATEMENT OF THE LAW SECOND, TORTS § 431 (1965).
 - iv. Proximate cause – The athletic trainer’s conduct caused the injury without any interruptions by another intervening event. *See Searles*, 695 A.2d at 1209. In other words, if it were not for the athletic trainer’s conduct in question, the injury would never have occurred. *See Id.*
 - v. Injury – The athlete suing an athletic trainer must have suffered some type of injury or damage.
- D. Athletic trainers may face criminal liability if failing to carry out a legal duty results in a violation of federal or state law. *See Wallace*, 961 S.W.2d 712.
- E. Athletic trainers may also violate an athlete’s constitutional civil rights if failing to carry out a duty results in a violation of the Constitution of the United States or the constitution of the athlete’s state. *See Burden v. Wilkes-Barre Area School Dist.*, 16 F. Supp. 2d 569 (M.D. Pa. 1998); *Roventini v. Pasadena Indep. School*, 981 F. Supp. 1013 (S.D. Tex. 1997); *Haffer v. Temple Univ.*, 678 F. Supp. 517 (E.D. Pa. 1987); *Brennan*, 691 So.2d 324; *Regents of the Univ. of Colorado v. Derdeyn*, 863 P.2d 929 (Colo. 1993).
- F. Kleinknecht v. Gettysburg College
- 1. Kleinknecht died of cardiac arrest, which resulted from a fatal attack of cardiac arrhythmia that Kleinknecht suffered during a lacrosse practice at Gettysburg College. *Kleinknecht*, 989 F.2d. at 1362-65.

2. Prior to Kleinknecht's death, no other athlete at Gettysburg had ever suffered cardiac arrest while playing any sport. *Id.* at 1363.
3. Neither of the College's two full-time athletic trainers nor any student trainers were present at the lacrosse practice where Kleinknecht died. *Id.*
4. The plaintiffs, Kleinknecht's parents, brought this wrongful death and survival action against the College. *Id.* at 1362.
5. The plaintiffs argued that the College was negligent in its handling of Kleinknecht's emergency situation during the lacrosse practice. *Id.* at 1366.
6. The United States Court of Appeals for the Third Circuit held that the College owed a special duty to Kleinknecht based on the head athletic trainer's active recruitment of Kleinknecht to play lacrosse at the College, and the fact that the practice was a scheduled athletic event of an intercollegiate team under the supervision of College employees rather than stemming from a personal work-out. *Id.* at 1367.
7. The Court also held that the College should have foreseen that athletes were capable of sustaining life-threatening injuries, like Kleinknecht's, during athletic events. *Id.* at 1370.
8. Furthermore, both the head athletic trainer and the student trainers testified that they were aware of instances at other schools where athletes had died during athletic events. *Id.*
9. Additionally, the court held that public policy supported its decision that the College owed a special duty to Kleinknecht based on his status as an intercollegiate athlete. *Id.* at 1372.
10. However, the court declined to extend its holding in *Kleinknecht* so far as to require that the College "have a CPR certified athletic trainer on site at each and every practice whether in-season or off-season, formal or informal, strenuous or light . . . [or to have an athletic trainer in] intramural, club sports and gym class." *Id.* at 1370.

11. The court's holding was narrowly limited to the facts of this particular case.

Id.

12. Lessons:

- a. Institutions owe a special duty to their athletes that participate in organized sports and sporting events.
- b. A special duty may be created when an institution or an employee thereof actively recruits student athletes to participate in the institution's sports programs.
- c. Institutions may have a duty to provide certified athletic trainers at various sporting competitions, practices, or other related events.

II. DUTY TO BE INFORMED

A. Athletic trainers should make reasonable efforts to stay informed as to what their athletes are putting into their bodies and to advise them accordingly.

1. Performance supplements and drugs are rapidly emerging in areas of sports law. When working with athletes, athletic trainers may face potential liability for making wrong decisions regarding these supplements.
2. Ephedrine and ephedra-based supplements have garnered increasing media attention in recent years, primarily due to the deaths of athletes such as Rashidi Wheeler, Steve Becheler and Korey Stringer.
 - a. The NCAA bans ephedrine. Trainers who either recommend that players take it or fail to make reasonable efforts to prevent players from taking it may be liable for negligence in addition to violating NCAA rules.
 - b. Ephedrine has been linked to several athletes' deaths. An athletic trainer who recommends ephedra or any other potentially harmful supplement may find himself or herself as a defendant to a wrongful death action. *See Capati*, 295 A.D.2d 181.

i. Rashidi Wheeler

- (1) The Northwestern University football player's death during a practice has prompted his mother to file a lawsuit against the University, its coaches, and its athletic trainers.
- (2) Wheeler's mother claims that the coaches and the head athletic trainer had prior knowledge that players were using ephedrine-based products. *See* MINDY HAGEN, UNIVERSITY WIRE, *Northwestern U.: Northwestern U. football players used supplements* (Wed., Jan. 23, 2002).
- (3) Evidence produced thus far indicates that assistant athletic trainers were aware of ephedrine use by as many as 12 players, but the head athletic trainer maintains he was not informed until after Wheeler's death. *Id.*
- (4) The University, coaches and athletic trainers have blamed supplement companies in efforts to shift liability. *Id.*

ii. Steve Bechler

- (1) Using ephedra-based dietary supplements may have contributed to the Baltimore Orioles pitcher's death, which ultimately resulted from heat stroke during conditioning practice. *See* RICHARD B. KREIDER, MIKE GREENWOOD, LORI GREENWOOD, & BRIAN LEUTHOLTZ, MUSCLE & FITNESS, *The real truth about Ephedra* (Sunday, June 1, 2003).
- (2) Baylor University conducted an investigative study and determined that if athletic trainers had properly conditioned and adequately supervised Bechler he may be alive today. *Id.*
 - (a) The Baylor University researchers questioned whether the athletic trainers were aware that Bechler had not eaten solid foods for several days, that he was wearing multiple layers

of clothing during practice, and that he was taking ephedrine-based supplements in an effort to lose weight. *Id.*

(b) The researchers believe that athletic trainers should know what supplements their athletes are taking so they can counsel them about the safety, legality, and effectiveness of such supplements. *Id.*

(c) Bechler also had a pre-existing medical condition that was exacerbated by ephedrine use. *Id.* The researchers claimed the athletic trainers should have been aware of the condition to effectively counsel Bechler against ephedrine use. *Id.*

(3) Baylor researchers stress the importance of athletic trainers educating their athletes about the risks of practicing in hot and humid weather. *Id.*

(4) Finally, athletic trainers' knowledge of medical histories should raise a "warning flag" that such an athlete should be closely monitored. *Id.*

c. Capati v. Crunch Fitness International, Inc.

i. This is the first published case in which a **personal** trainer working for the defendant gym allegedly urged a woman to take a dietary supplement containing ephedrine. *See Capati*, 295 A.D.2d 181.

ii. Anne Marie Capati was in her thirties when she collapsed at the gym where she was working out. *Id.*

iii. Capati died of a brain hemorrhage fourteen hours after collapsing at the gym. *Id.*

iv. An expert doctor stated that ephedra had probably caused Capati's death. *Id.*

- v. The final outcome of this lawsuit has not yet been decided, but the court held that the defendant could not prevent the doctor's testimony from being used. *Id.*

3. Spark

- a. Spark is a citrus-flavored powder that is mixed with water or juice, and contains even more caffeine than most coffee. JENA JANOVY & STEVE BEIDECK, OMAHA WORLD-HERALD, *Supplement is sparking debate over sports use. The caffeine punch of Spark roils Omaha swim teams and concerns school activities officials. Caffeine comparison. The skinny on Spark.* (Sunday, Feb. 23, 2003).
- b. High school swimmers are using the Spark supplement in efforts to swim faster. *Id.*
- c. Despite its legality, athletic trainers are careful not to advise swimmers to take Spark for fear of liability concerns since Spark is not medically approved. *Id.*
- d. Lessons:
 - i. Athletic trainers should keep themselves informed and up-to-date on new supplement products appearing in the marketplace that have not yet been approved by the FDA, athletic associations, or other sports and health related organizations.
 - ii. Athletic trainers who observe athletes using unknown supplements have a duty to investigate the safety and legality thereof.

B. Athletic trainers should become familiar with state laws governing their profession and be informed of when they may and may not render medical treatment to athletes.

1. State Laws

- a. As of December 2002, 26 states required state licensure of athletic trainers.

b. Many state statutes include common themes regarding (1) the athletic trainer's obligation to obtain physicians' consent or advice before rendering treatment to an athlete, and (2) the use of physical modalities in the treatment of athletic injuries. See MATTHEW J. MITTEN, *Emerging Legal Issues in Sports Medicine: A Synthesis, Summary, and Analysis*, 76 ST. JOHNS. L. REV. 5 (2002). For example:

i. Connecticut

(1) “‘Athletic training’ means the application or provision, with the consent and under the direction of a health care provider, of (A) principles, methods and procedures of evaluation, prevention, treatment and rehabilitation of athletic injuries sustained by athletes, (B) appropriate preventative and supportive devices, temporary splinting and bracing, physical modalities of heat, cold, light massage, water, electric stimulation, sound, exercise and exercise equipment....” CONN. GEN. STAT. ANN. § 20-65f (2003).

ii. Georgia

(1) “‘Athletic trainer’ means a person with specific qualifications, as set forth in Code Section 43-5-8 who, upon the advice and consent of a physician, carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries; and, in carrying out these functions, the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices....” GA. CODE. ANN. § 43-5-1 (2002).

iii. Kentucky

(1) “‘Athletic trainer’ means a person with specific qualifications, as set forth in KRS 311.916, who, upon the advice and consent

of a team physician, carries out the practice of prevention or physical rehabilitation, or both, of injuries incurred by participating athletes at an educational institution, professional athletic organization, or other bona fide athletic organization. In carrying out these functions the athletic trainer is authorized to use whatever physical modalities as are deemed necessary by a team physician....” KY. REV. STAT. ANN. § 311.900 (Banks-Baldwin 1990).

iv. South Carolina

(1) “‘Athletic trainer’ means a person with specific qualifications as set forth in Section 44-75-50 who, upon the advice and consent of a licensed physician, carries out the practice of care, prevention, and physical rehabilitation of athletic injuries, and who, in carrying out these functions, may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment.” S.C. CODE ANN. § 44-75-20 (Law Co-op. 2002).

v. Tennessee

(1) “‘Athletic trainer’ means a person with specific qualifications as set forth in this chapter, who, upon the advice, consent and oral or written prescriptions or referrals of a physician licensed under this title, carries out the practice of prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of athletic injuries, and, in carrying out these functions the athletic trainer is authorized to use physical modalities, such as heat, light, sound, cold, electricity, or mechanical devices....” TENN. CODE ANN. § 63-24-101 (2002).

2. Other state statutes are even more specific as to the athletic trainer's obligation to consult with a physician regarding an athlete's injury:
 - a. Maine
 - i. "An athletic trainer may not make a medical diagnosis. The athletic trainer shall refer to a licensed doctor of medicine, osteopathy, podiatry or dentistry an athlete whose physical condition, either at the initial evaluation or during subsequent treatment, the athletic trainer determines to be beyond the scope of the practice of the athletic trainer." ME. REV. STAT. ANN. tit. 32 § 14354.
 - ii. "If there is no improvement in an athlete who has sustained an athletic injury within 15 days of initiation of treatment, the athletic trainer shall refer the athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist." *Id.*
 - iii. "If an athletic injury requires treatment for more than 45 days, the athletic trainer shall consult with, or refer the athlete to, a licensed doctor of medicine, surgery, osteopathy, podiatry or dentistry, or a licensed physical therapist. The athletic trainer shall document the action taken." *Id.*
3. Illinois' statute actually lists the specific duties of athletic trainers.
 - a. "Specific duties of the athletic trainer include but are not limited to:
 - A. Supervision of the selection, fitting, and maintenance of protective equipment;
 - B. Provision of assistance to the coaching staff in the development and implementation of conditioning programs;
 - C. Counseling of athletes on nutrition and hygiene;
 - D. Supervision of athletic training facility and inspection of playing facilities;

E. Selection and maintenance of athletic training equipment and supplies;

F. Instruction and supervision of student trainer staff;

G. Coordination with a team physician to provide:

(i) pre-competition physical exam and health history updates,

(ii) game coverage or phone access to a physician or paramedic,

(iii) follow-up injury care,

(iv) reconditioning programs, and

(v) assistance on all matters pertaining to health and well-being of athletes.

H. Provision of on-site injury care and evaluation as well as appropriate transportation, follow-up treatment and rehabilitation as necessary for all injuries sustained by athletes in the program;

I. With a physician, determination of when an athlete may safely return to full participation post-injury; and

J. Maintenance of complete and accurate records of all athletic injuries and treatments rendered.” 225 ILL. COMP. STAT. ANN. 5/3 (2003).

4. State statutes in litigation

a. Georgia Physical Therapy, Inc. v. McCullough

i. A high school football player sued his athletic trainer after complications arose from the treatment of the player’s ingrown toenail. *Georgia Physical Therapy*, 466 S.E.2d 635.

ii. The player alleged that the high school breached its duty to their athletes by allowing the athletic trainer to treat the toenail without the consent of a physician, which would have been a violation of the state’s statute (i.e. practicing medicine without a license). *Id.* at 636.

- iii. The appeals court determined that the athletic trainer did not violate the statute because she did not use any “physical modalities” during treatment, as are defined in the statute, and therefore did not first have to obtain advice or consent from a physician. *Id.* at 636-37.

C. Trainers should make a reasonable effort to be informed of how coaches and other team personnel interact with athletes.

1. Sexual Harassment

a. DiSalvio v. Lower Merion School District

- i. The athletic trainer witnessed the inappropriate touching of a high school football team manager by the assistant coach. *See DiSalvio*, 2002 WL 734343 at *5.
- ii. The court held that the athletic trainer should have known that the victim might be subject to emotional problems as a result of the inappropriate touching. *Id.*
- iii. Negligence and negligent infliction of emotional distress claims were permitted to go forward against the athletic trainer. *Id.*

b. Lesson:

- i. Athletic trainers who observe inappropriate touching or other forms of sexual harassment should disclose such information to appropriate person(s).

D. Athletic trainers are required to exercise personal discretion based on the information they have gathered and their training and experience in evaluating an athlete’s injury and recommending a course of treatment.

1. Athletic trainers employed at public state-funded institutions may enjoy the protection of governmental or “discretionary function immunity.”
2. In general, this means that the publicly employed athletic trainer is immune from liability for acts of ordinary negligence committed within the scope and in the course of his/her public function (i.e. treating athletes at state-funded institutions).

3. To be held liable, the evidence must establish that the publicly employed athletic trainer acted with reckless disregard for the health and safety of the athletes or was grossly negligent.
4. Lennon v. Petersen
 - a. Patrick Lennon sued his soccer coach and athletic trainer for alleged negligence in treating his strained groin. *Lennon*, 624 So.2d at 172.
 - b. Lennon's athletic trainer applied ice and electricity to the affected groin area. *Id.* at 173.
 - c. Lennon ultimately needed two surgeries to correct avascular necrosis, which manifested itself in his hip joints. *Id.*
 - d. The athletic trainer's job required her to use discretion and personal judgment. *Id.* at 175.
 - e. Athletic trainers are responsible for ascertaining the origin and the extent of an injury, and determine whether an athlete is simply "faking" an injury. *Id.*
 - f. Athletic trainers also have a duty to determine when an athlete is "hiding" an injury in an attempt to go back into the game. *Id.*
 - g. Athletic trainers must exercise personal discretion to determine when it is necessary to refer an athlete to a doctor or restrict him/her from playing. *Id.*
 - h. Because the athletic trainer was employed by a state agency and the position she held clearly necessitated reliance on her own judgment in making difficult decisions, the court declared that she was entitled to discretionary function immunity. *Id.*
5. Passinault v. Stoessner
 - a. Passinault was a student in the athletic training/sports medicine program at Northern Michigan University. 2002 WL 31938897 at *1.

- b. As part of his training, Passinault attended a college hockey game and was instructed by the head athletic trainer to stand beside the player's bench. *Id.*
- c. Passinault was hit in the eye by a flying puck, causing irreparable eye damage. *Id.*
- d. Passinault sued the head athletic trainer and Northern Michigan University for instructing him to stand next to the players' bench and for failing to warn him of the potential dangers of standing in that location. *Id.*
- e. Because Passinault was a state employee, he was immune from liability for injuries caused during the course of his employment if: (1) he was acting within the scope of his authority, (2) was engaged in the discharge of his governmental function, and (3) if his conduct did not amount to gross negligence. *Id.*
- f. However, the evidence established that the head athletic trainer and his assistant both repeatedly warned Passinault to be aware of the puck's location at all times. *Id.* at *2.
- g. Since warnings had been given, the head athletic trainer had not acted in a grossly negligent manner and was therefore protected by governmental immunity as an employee of the state of Michigan. *Id.*

III. DUTY TO INFORM OTHERS

A. Athletic trainers must make reasonable efforts under the circumstances to inform the coaches and athletes they serve as to the nature, severity and prognosis of athletes' injuries.

1. Searles v. Trustees of St. Joseph's College

- a. Paul Searles was diagnosed with patellar tendonitis during his freshman basketball season at St. Joseph's College in Maine. *Searles*, 695 A.2d at 1208.

- b. Searles continued to play for another season before quitting because of chronic and permanent knee pain. *Id.*
- c. Searles sued his coach, alleging that he insisted that Searles continue playing despite knowing that Searles' knees were not healthy enough. *Id.*
- d. Searles also sued St Joseph's head athletic trainer for allegedly failing to advise the coach that Searles should not have been playing because of his knee problems. *Id.* at 1211.
- e. The athletic trainer testified that he recognized the nature of Searles' problem, was concerned that continued play would result in greater injury, and that he discussed Searles' medical problem with the head coach. *Id.*
- f. The head coach testified that the athletic trainer never advised him that Searles could be permanently impaired by continued play and never suggested that he should not play. *Id.*
- g. The head coach also testified that it was the athletic trainer's decision whether an injured player could play basketball, not the coach's. *Id.*
- h. The court allowed the negligence lawsuit to go forward against the athletic trainer, both for failure to inform the coach as to the nature and extent of Searles' injury, as well as his failure to advise Searles that he should not continue to play basketball in light of his knee injuries.
- i. Lessons:
 - i. Athletic trainers should be truthful and realistic with both athletes and coaches in disclosing any information or knowledge they possess regarding the nature and extent of an athlete's injuries.
 - ii. Athletic trainers must inform their athletes of the risks and ramifications of continuing to play their sport while injured.

iii. The athletic trainer's duty is to the athlete first, and the athletic program second. The athlete's current and future health and safety always takes precedent.

B. Athletic trainers should refer injured athletes to physicians without delay when the diagnosis or treatment of the athlete's injury is outside the scope of the athletic trainer's training and experience.

1. Jarreau v. Orleans Parish School Board

- a. Darrin Jarreau injured his wrist when he struck another player's helmet during a high school football game in Louisiana. *Jarreau*, 600 So.2d at 1390.
- b. Jarreau's coaches did not withhold him from subsequent games, thereby causing Jarreau's injured wrist to worsen. *Id.* at 1391.
- c. Upon Jarreau's request, his high school's athletic trainer referred him to an orthopedist who determined that Jarreau suffered from a fracture and cyst, which ultimately required two surgeries and immobilization by casts for about one year. *Id.*
- d. The orthopedist concluded that the delay in Jarreau seeking medical treatment likely exacerbated the injury by extending the period of recovery and limiting the results of treatment. *Id.*
- e. Jarreau sued his coach, his athletic trainer and his school alleging that they should have referred him to a physician earlier. *Id.*
- f. The court stated that the athletic trainer and coaches should have recognized their limited knowledge regarding Jarreau's injury and should have sought medical advice sooner. *Id.* at 1393.
- g. The court held that the coach and athletic trainer could not be expected to diagnose the extent of Jarreau's injury. However, they should have recognized their limitations in this regard and provided Jarreau with

access to expert medical advice in light of Jarreau's continuing complaints of pain and swelling in his wrist. *Id.*

h. Lessons:

- i. Athletic trainers should seek medical advice or recommend that an athlete consult a physician as soon as they determine that an injury may be outside of their immediate scope of training and experience.
- ii. If an injury cannot be treated through the athletic trainer's everyday procedures, it should immediately be referred to a physician.

C. Athletic trainers must fully and accurately inform treating physicians of each and every one of an athlete's complaints and symptoms.

1. Pinson v. Tennessee

- a. Pinson was struck in the head during football practice at the University of Tennessee at Martin. *Pinson*, 1995 WL 739820 at *1.
- b. Pinson walked to the sideline, exclaimed that he had been "kicked in the head," and then fell unconscious for ten minutes. *Id.*
- c. UTM's athletic trainer examined Pinson and discovered that he had palsy on the left side of his face, no control over the left side of his body, unequal pupils and no response to pain, sound, or movement. *Id.*
- d. The head athletic trainer sent Pinson to a local hospital accompanied only by a student athletic trainer. The head athletic trainer failed to give the student trainer any information regarding Pinson's injury and its surrounding circumstances to relay to doctors at the hospital. *Id.*
- e. The student trainer erroneously told the emergency room nurse that Pinson had been unconscious for about two minutes. *Id.*
- f. The hospital never conducted a CT scan because the doctors had no reason to know of the signs of neurological damage that the head trainer had witnessed on the field shortly after Pinson's injury occurred. *Id.*

- g. Pinson's treating physicians testified that a CT scan would have been performed had the doctors been informed as to what the head athletic trainer had observed shortly after the injury (the "lucid interval" between the time Pinson was injured and the moment at which he collapsed in unconsciousness). *Id.*
- h. Pinson's stay in the hospital was brief and he quickly returned to practice with the football team. *Id.*
- i. Pinson constantly complained of dizziness, headaches, nausea and blurred vision for the next three weeks. The head athletic trainer never reported any of these symptoms to the doctor that treated Pinson at the hospital following the incident on the field a few weeks earlier. *Id.*
- j. Eventually Pinson collapsed again at practice and was taken to a different hospital where he underwent brain surgery. The brain surgeon found that Pinson had sustained a chronic subdural hematoma, which was three to four weeks old. To this day Pinson has permanent brain damage and is unable to hold any type of job. *Id.*
- k. The court held that the head athletic trainer owed Pinson a duty to exercise reasonable care under the circumstances of the injury. Reasonable care would have entailed reporting the details of Pinson's injury, including the subsequent headaches, to doctors. The head athletic trainer clearly breached this duty, and therefore UTM was held liable for Pinson's injuries. *Id.*
- l. Lessons:
 - i. Trainers should always disclose as much information as possible to the physicians treating their athletes, regardless of whether that information is solicited by the physician or not.
 - ii. Volunteer information freely.

- iii. Keep detailed and accurate notes and records of injuries and treatments, and share that information with consulting and treating physicians.

D. Athletic trainers should make reasonable efforts to inform athletes of applicable drug-testing policies and the penalties for noncompliance therewith.

1. Brennan v. Board of Trustees for University of Louisiana Systems
 - a. Brennan was a football player at the University of Southwestern Louisiana who tested positive for drug use in the second of three NCAA random administered drug tests. As a result, Brennan was required to serve an NCAA-imposed one-year suspension from the football team. *Brennan*, 691 So.2d at 325.
 - b. Brennan sued USL, alleging that the University failed to warn him against taking nutritional supplements in violation of NCAA guidelines. *Id.* at 331.
 - c. For purposes of discussion only, the court assumed that USL's athletic trainers were under a duty to warn Brennan of upcoming NCAA drug tests and the consequences to his eligibility if he should fail a drug test. *Id.* at 330.
 - d. However, there was overwhelming evidence that the head athletic trainer met with the football team each fall to explain the drug-testing program and to warn the of the consequences of testing positive. *Id.*
 - e. Also, Brennan had signed the NCAA drug testing consent form and was provided with copies of a summary of the NCAA regulations, an opportunity to ask questions about the regulations, and an opportunity to review the NCAA manual. *Id.*
 - f. Lessons:

- i. Athletic trainers should provide each athlete with an opportunity to review the NCAA's drug-testing policy, provide each with a summary of the rules, and give each an opportunity to ask questions about the drug-testing program.
- ii. Athletic trainers should make reasonable efforts to inform athletes as to the possible consequences of testing positive for drugs or other supplements.

E. Athletic trainers must make reasonable efforts to maintain accurate records of prescription drugs distributed to athletes and to keep such drugs under lock and key.

1. Athletic trainers are not pharmacists or physicians. Yet many athletic trainers working under the direction of physicians still distribute both over-the-counter and prescription drugs to athletes, sometimes in violation of state and federal law. *See* MARK ALESIA, INDIANAPOLIS NEWS/INDIANAPOLIS STAR, *Teams keep prescription drugs under lock and key* (Tuesday, Dec. 10, 2002).
2. A 1998 survey of 188 schools revealed that head athletic trainers at 48 schools gave out one dose of a prescription medication to an athlete, and 23 gave out more than one dose. *Id.*
3. Athletic trainers may be civilly and/or criminally liable for adverse affects resulting from prescription drugs they give to an athlete. *Id.*
4. Training rooms often stock prescription drugs for immediate care, convenience, off-hours accessibility and cost. Therefore, federal and state laws governing storage, security, record-keeping and distribution apply. *Id.*
5. Athletic trainers should familiarize themselves with the NCAA's "Sports Medicine Handbook" section titled "Dispensing Prescription Medication."

6. Athletic trainers should also familiarize themselves with the laws of the states in which they practice regarding prescription drugs, as they can vary widely from state to state.
7. Wallace v. Broyles
 - a. Wright, a football player at the University of Arkansas, committed suicide by gunshot in 1993. *Wallace*, 961 S.W.2d at 713.
 - b. Wright's mother sued nine people at the University, including the head athletic trainer, alleging that controlled substances, specifically Darvocet painkiller, was illegally distributed to Wright, thus contributing to his suicide. *Id.*
 - c. Wright's mother also alleged that prescription drugs were stored in an unlocked cabinet inside the training room. *Id.*
 - d. Evidence showed that the head athletic trainer was aware of the NCAA's stance on controlled substances and the policy on distribution to athletes. *Id.* at 715.
 - e. The head athletic trainer had previously been arrested and charged with violations of the Federal Controlled Substance Act for failing and refusing to keep records regarding storage and disbursement of prescription drugs. *Id.* at 716.
 - f. The evidence also indicated that the head trainer was aware of Wright's suicidal tendencies and propensity to abuse alcohol and was aware of potential health problems if Darvocet was mixed with alcohol. *Id.* at 719.
 - g. The head trainer argued that as a state employee, he was protected by governmental immunity against any liability for ordinary negligence over and above the limits of his liability insurance coverage. *Id.*
 - h. The court held that the head athletic trainer was not immune from lawsuit and the case could go forward against him to determine whether

he acted with conscious indifference as to the consequences that could befall Wright due to the training room's drug-dispensing procedures.

Id.

- i. Lessons:
 - i. Athletic trainers should keep prescription drugs under close watch and in a secured location, preferably outside of the training room where athletes have easy access.
 - ii. Athletic trainers must keep complete and accurate records of every drug they order from a physician or pharmacist and every drug they dispense to an athlete.
- j. NCAA guidelines for prescription medication in training rooms:
 - i. Athletic trainers should not be assigned duties that may only be performed by physicians or pharmacists.
 - ii. Drug distribution records should be created and maintained where dispensing occurs.
 - iii. Medications should be stored in designated areas that assure environmental and security conditions.
 - iv. Drug stocks should be examined regularly for removal of outdated or recalled medications.
 - v. Emergency and travel kits should be inspected regularly for drug quality and security.

IV. DUTY TO PROVIDE SAFE EQUIPMENT AND SAFE ENVIRONMENT

A. Athletic trainers should make reasonable efforts to ensure the safety of the athletic equipment supplied to their athletes.

1. Athletic trainers are better suited than coaches to recognize potential injury risks that can result from improper equipment.

2. Athletic trainers' involvement with dispensing and fitting of equipment may be lessened at larger institutions that employ equipment managers.
3. Espersen v. Buffalo County Public School District
 - a. Espersen suffered a blunt trauma injury while playing high school football near Buffalo, NY, which resulted in the formation of a blood clot on the outside of his brain. *Espersen*, 2000 WL 559011 at *1.
 - b. Espersen filed suit against his high school, alleging that his injuries resulted from a defective helmet that the school supplied to him. *Id.*
 - c. Espersen alleged that the school failed to inspect the helmet's padding to see whether air was injected into the pads, failed to properly repair the helmet, and failed to warn him of the dangers pertaining to playing football with a defective helmet. *Id.*
 - d. Based on the testimony of a certified athletic trainer from another high school, the court allowed the suit to go forward against the high school to determine whether the absence of air in the helmet's padding rendered it unsafe for use. *Id.* at *5-6.
 - e. Lessons:
 - i. Athletic trainers should make reasonable efforts under the circumstances to inspect equipment for proper fit, defects and equipments' compliance with applicable safety regulations.
 - ii. Athletic trainers should not rely on coaches to determine whether a player is using safe equipment. Coaches are often unaware of the types of injuries that can result from improper equipment.

V. DUTY TO PROVIDE FAIR AND EQUAL COVERAGE

A. Institutions may have a duty to make athletic trainers available at athletic practices and competitions.

1. Threats of injury and potential liability have fueled the demand for more athletic trainers on-site at athletic events and practices. THE BOSTON GLOBE, *Increasingly, High Schools Are Hiring Trainers* (Sunday, March 17, 2002).
2. Budget constraints, staffing limitations, and scheduling issues often limit schools' abilities to provide equal or adequate coverage for all sports. *Id.*
3. Athletes at state-funded schools may have a constitutional right protecting them against deprivation of their bodily integrity and deprivation of their life caused by the deliberate indifference of school officials.
4. Roventini v. Pasadena Independent School
 - a. Roventini died of heat stroke while practicing with his high school football team in suburban Houston, TX. *Roventini*, 981 F. Supp. at 1016.
 - b. Roventini's parents filed a lawsuit alleging that the coaches did not acclimatize Roventini to the hot weather, did not give him enough time to rest during practice, and did not provide him with enough water to avoid dehydration. *Id.* at 1016.
 - c. During "gasser" drills, Roventini showed signs of heat exhaustion, but the coaches continued to push him through the drills. *Id.*
 - d. The school's athletic trainer was not present during this practice. *Id.* at 1023.
 - e. Roventini's parents alleged that the athletic trainer's absence violated general football coaching standards and University Interscholastic League rules. *Id.*
 - f. The court allowed the case to go forward against the coaches and the athletic trainer to determine whether the athletic trainer's conduct was reasonable under the circumstances. *Id.* at 1026.
 - g. Lessons:

- i. Athletic trainers at state-funded institutions may be under a duty to be present and available at games, practices, and conditioning sessions.
- ii. Athletic trainers must make reasonable efforts to advise coaches to provide athletes with plenty of rest, water, and other necessary items to avoid heat stroke and other health complications or injuries.
- iii. Athletic trainers must make reasonable efforts to monitor athletes carefully during sporting events and practices and be aware of indications of impending injury or health problems.

B. Athletic trainers should make reasonable efforts to be equally available at men's and women's events, and should avoid giving preferential treatment to athletes of one gender over another.

1. Haffer v. Temple University

- a. This was a class action lawsuit in which actual and potential female athletes sued the University for gender discrimination in a multitude of expenditures and services related to college athletics. The plaintiffs alleged that the University violated the United States Constitution and the Pennsylvania constitution in favoring men's sports. *Haffer*, 678 F. Supp. 517.
- b. The plaintiffs claimed that athletic trainers gave preference to male student athletes through the number of athletic trainers available and the nature and extent of services offered. *Id.* at 533.
- c. Evidence indicated that the women seeking treatment arrived at the training room before the men, but were required to wait until the men were treated before they could see an athletic trainer. *Id.*
- d. Evidence indicated that the training rooms were sometimes used exclusively for men's teams while the women waited for services. *Id.*

- e. Evidence indicated that men were driven by car to receive athletic trainers' treatment while the women had to take public transportation. *Id.*
- f. The court held that this evidence was indicative of gender discrimination and therefore allowed the suit to go forward on the gender discrimination claim. *Id.*
- g. Lessons:
 - i. Although budget constraints may present obstacles, athletic training departments should make reasonable efforts to provide equivalent coverage at men's and women's events.
 - ii. Reasonable efforts should be made to ensure that athletes are provided with equal levels of attention and services, regardless of their gender or the sport that they participate in.

C. Duty to Provide Coverage at Athletic Competitions and Practices

- 1. Burden v. Wilkes-Barre
 - a. The father of a high school football player brought this lawsuit against his deceased son's high school after the son died at football practice of respiratory abnormalities at extreme temperatures. 16 F. Supp. 2d at 570.
 - b. Earlier that year, the school board had decided not to hire an athletic trainer to attend practices and games. *Id.*
 - c. However, the high school did not have any "fixed course of action" of refusing to provide an athletic trainer at athletic competitions. A fixed course of action is required to make out the constitutional violation that Burden's father was attempting to prove. *Id.* at 572.
 - d. The court in *Wilkes-Barre* concluded that the school did not owe the deceased football player a duty to provide him with athletic trainer

because the one-time decision not to hire an athletic trainer did not constitute an official school policy (course of action). *Id.*

- e. *Wilkes-Barre* is different from *Haffer* because in *Haffer* the University had a fixed course of action and was diverging from that course with regards to the athletic trainers' treatment of women.
- f. Lessons:
 - i. A one-time decision by a state-funded institution not to provide an athletic trainer may not violate athletes' constitutional rights to life and liberty.
 - ii. An official school policy or fixed course of action by a state-funded institution may expose the institution to liability under the 14th Amendment of the United States Constitution.

2. Kennedy v. Syracuse University

- a. Kennedy was a scholarship gymnast who suffered a fractured wrist during practice while working out on the high bar. 1995 WL 548710, *1 (N.D.N.Y. 1995).
- b. No athletic trainers were present at the practice, thereby forcing the coaches and teammates to administer aid to gymnast. *Id.*
- c. The gymnast filed suit against the University, alleging that the University was negligent, breached a contract with the gymnast, and breached an assumed duty to provide athletic trainers at practices. *Id.*
- d. The court dismissed the gymnast's lawsuit because he was unable to prove that the absence of athletic trainers at the practice caused his injury. Evidence showed that all of his injuries were caused by wrapping his wrist around the high bar, and not by subsequent treatment by the coaches and teammates. *Id.* at *3-4.
- e. Lessons:

- i. If athlete's injury is caused solely by athletic competition, and is not exacerbated by inadequate subsequent treatment, failure to provide athletic trainers on-site may not result in liability.