



Oregon Health Licensing Agency
Board of Athletic Trainers



9 am, Monday, February 28, 2011
700 Summer Street NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Russ Cagle, Ph.D., Chair
Greg Hill, Vice-Chair
Jeremy Ainsworth
Nelson Lomax

STAFF PRESENT

Randy Everitt, Director
Sylvie McMillan, Business Services Manager
David Sparks, Regulatory Operations Manager
Nancy Sellers, Senior Policy Analyst
Sinnamon Harris, Board Specialist

MEMBERS ABSENT:

Dr. Robert Sandmeier

GUESTS PRESENT:

Shelly Jones

*This meeting was live audio streamed within the Oregon Health Licensing Agency and externally to agency and board stakeholders.

Call to Order

Russ Cagle, Chair, called the meeting of the Board of Athletic Trainers to order at 9:15 am, Monday, February 28, 2011, at the Oregon Health Licensing Agency (OHLA), Rhoades Conference Room, 700 Summer Street NE, Salem, Oregon. Roll was called for present board members.

1. Approval of Agenda

MOTION:

Greg Hill made a motion with a second by Jeremy Ainsworth to approve the agenda. Motion passed unanimously.

2. Approval of Minutes

MOTION:

Greg Hill made a motion with a second by Jeremy Ainsworth to approve the minutes for November 29,

2010. Motion passed unanimously.

3. Reports

• Director's Report

Randy Everitt, Director, presented a letter from former Governor Ted Kulongoski addressed to the board expressing the former governor's sincere appreciation for the board's service and dedication during his administration.

Everitt described the new audio/visual broadcast of today's full board meeting to the members and how stakeholders would be able to gain access via their own computers. Everitt pointed out the system is still in its testing phase and in the near future a link will be available on the OHLA website for interested parties to log in to listen and see the board meetings live.

• Outreach and Communications

Sylvie McMillan, Business Services Manager, filled in for Kraig Bohot, Public Information Officer, and presented Bohot's *Central Issues* publication ideas. McMillan stated Bohot would e-mail the draft publication to board members for review and requested the board members respond with their feedback.

• Statistical Report

McMillan presented an overview of statistics related to the board. Statistics included were licensing, examination and regulatory statistics, active license trends, complaints, age diversity in practitioners, gender of licensees, and website traffic. McMillan pointed out the average active registration has been on an increasing trend since the third quarter of the 2009-2011 biennium.

• 2010-2011 Budget

McMillan reviewed the statement of actual cash flow for the period 7/01/09-1/31/2011. McMillan pointed out where the cost allocation changed for the small board assessment rate on October 1, 2010, because the Regulatory Operations Division was removed from the indirect rate to direct costs. The new cost allocation indirect rate for DO/BSD/LICEN is 1.81 percent. McMillan explained when the board directs the agency's assistant attorney general to review, for example, the athlete trainer scope of practice, the board incurs direct costs. Investigators responding to complaints keep track of the time spent for each board under the agency and those costs are also direct costs.

• Regulatory Operations Division Report

David Sparks, Regulatory Operations Manager, reported on enforcement activity. Between July 2009 and February 2011, 16 complaints had been filed with the agency. Seven remain open (although five are ready to close). During the current regulatory reporting period of November 1, 2010, through February 23, 2011, the agency received one complaint that is still under investigation.

Sparks explained that the terms *critical complaints* or *non-critical complaints* are being phased out. He stated the agency is moving away from that type of characterization of complaints with the use of the new investigative protocol. When the agency receives a new complaint, Sparks continued, it is first reviewed to see if the complaint meets the "reasonable standard." Sparks explained the term "reasonable standard" as reasonable cause to believe a statute or rule has been violated.

- **Policy, Legislation and Administrative Rules**

- Legislative Overview**

Nancy Sellers, Senior Policy Analyst, presented a memorandum outlining an overview of the legislative process and the role of the board member in this process.

Hierarchy of Law Governing State Agencies

- US and Oregon Constitutions
- Oregon Revised Statutes
 - *Oregon Laws*
 - *Budget Notes*
- Governor's Executive Orders/Agency Directives
- Oregon Administrative Rules
- Agency Policies
- Agency Practices

OHLA works closely with the Governor's Office, Department of Administrative Services, partner agencies, stakeholder groups and the Legislature to ensure that all bills, potential amendments and budgets that may impact the agency and its stakeholders are fully vetted and understood.

Sellers made it clear to the board that as OHLA board members they can be a great asset in the legislative process. The board members often play a dual role: both as agents of the state in their official capacity with OHLA, and as private citizens working in their individual professions. If a legislator, staffer or other agent of the Legislature contacts a board member directly regarding policies and legislation of the agency, please clarify with him or her that you are speaking as an individual, and not as a representative of the regulatory/advisory board of which you are a member.

Persons acting as agents of the executive branch of government – including agency management, employees and appointed board and council members – are not allowed to advocate for or against legislation, budgets or other legislative initiatives without the express permission of the Governor's Office.

Sellers reminded board members that if legislators or staffers are looking for an *official response*, please direct them to her or Samie Patnode, Policy Analyst, and they will follow up promptly and keep the board informed.

- Legislative Update**

Sellers handed out a Legislative Information Notification Update System (LINUS) information report and explained the process of how the agency is tracking—bills and closely monitoring any that may have an impact on the agency or one of the agency's boards/councils. Sellers provided the board with a brief synopsis of bills the agency may give testimony for and asked the board members to look over the report and contact her if they had any questions about any of the upcoming bills.

-Legislation and Rules Committee Report Summaries

Sellers pointed out to board members the Legislation and Rules Committee reports dated December 14, 2010, and February 10, 2011, included in their board packets for later review. Sellers then referred to the Department of Justice memorandum of legal advice dated February 9, 2011, provided by the agency's AAG. Privilege had been waived by the agency director for review by the board in open public meeting. Sellers read the questions and the short version of the AAG's answers aloud to the board. A detailed discussion of each question followed the questions and short answers in the document. The questions asked and the "short" answers received were as follows:

Question One: What does the phrase, "generally conducted in association with an educational institution, or professional or amateur sports activity" mean, as used within the statutory definition of "athlete?"

Short Answer: under ORS 688.701(1), "generally conducted in association with an educational institution, or professional or amateur sports activity," appears to mean activities of the same type as those typically seen in sports and schools. Legislative history seems to indicate athletic trainers' potential scope of practice.

Question Two: May the current statutory definition of "athlete" under ORS 688.701(1) be further defined by rule to include professionals who perform functions that require strength and agility, but who do not work in sport-related fields? The two examples of such professionals as provided by the board are musicians and construction workers.

Short Answer: No

Question Three: The scope of an athletic trainer's practice as understood within the field's national professional associations is not always the same as the statutory scope of practice for an Oregon registered athletic trainer. The national professional associations and some states have determined that workplace stretching programs and workplace injury prevention programs are within an athletic trainer's scope of practice. Are such programs or activities within the scope of practice of an Oregon registered athletic trainer?

Short Answer: Yes, for some of the activities included in that scope.

Question Four: Is an on-the-job injury in a non-athletic workplace setting an "athletic injury" under ORS 688?

Short Answer: Likely not, with the potential exception of a select few professions.

Question Five: Is it within an Oregon registered athlete trainer's scope of practice to treat an injury of a school marching band member, if the injury and treatment occur on the playing field, and this treatment was "associated with" an athletic team event or training for such an event?

Short Answer: Possibly.

Question Six: Is it within an Oregon registered athletic trainer's scope of practice to treat an injury of a school orchestra member, if injury and treatment occur within a school building and not in association with any athletic team event or training?

Short Answer: No, unless the injury occurs as the result of lifting a heavy instrument.

Question Seven: May any person call himself/herself an "athlete" and independently hire an Oregon registered athletic trainer without referral from a health care practitioner? If not, must that referral be from a physician, or may a nurse practitioner or physician assistant make the referral?

Short Answer: Regardless of what an individual calls herself/himself, she/he is only an "athlete" who can be treated by a registered athletic trainer if she/he fits under the statutory definition of "athlete" in ORS 688.701, as it is not statutorily required for a registered athletic trainer to obtain another health professional's referral before rendering treatment, whether a registered athletic trainer has received a referral from a physician, nurse practitioner, physician's assistant, or no one at all is irrelevant for the purposes of whom that athletic trainer may treat.

Cagle asked a clarifying question: would club sports participants be considered amateur athletes? Sellers stated that would be her perception.

Sellers noted more questions put forth to Department of Justice (DOJ) are forthcoming, and will be brought to the committee as they are available. The next Legislation and Rules Committee meeting is March 16, 2011.

-Review of Draft Letter

Sellers handed out a copy of a draft letter to be sent to all Oregon universities, colleges, community colleges, students, and other stakeholders concerning ORS 688.718 in which students of any type who have been Board of Certification certified have erroneously been exempt from registration in Oregon as athlete trainers. Sellers posed the question: Will this be a significant financial hardship for those students whose college or university may not be able or willing to pay for the registration?

Sellers stated the board has the option to direct OHLA to review the potential number of people who may now have to become registered, the dollar amount they would bring in, and then determine whether the board wishes to consider a reduced rate for students. The board may consider a reduced rate for initial registration or continue it as long as the person is a student, as graduate study may go on for many years.

Ainsworth felt it was important to require these people be registered so they can be monitored for public safety.

McMillan stated no rule changes would be required if students were treated exactly as any other athlete trainer registrant but if the students are treated differently, for example, paying half the full amount annually instead of the full amount every two years, then rule changes would be made. Sellers stated she would help the Legislation and Rules Committee through the rulemaking process and it could be

adopted as a temporary rule in order to get the rule in place as soon as possible upon the board's direction.

Ainsworth asked McMillan about the feasibility of changing from a two-year renewal structure to a one-year renewal structure for all registered athlete trainers. McMillan responded that several boards within the agency have moved to that model but to do so, OHLA needs to research and project revenues to find when is the best time to switch over from two years to one year.

Sellers noted the board needs to move quickly on the student fee issue because of the hiring cycle of higher education, but could take its time with the transition of all the renewal fees to annually.

MOTION:

Jeremy Ainsworth moved OHLA to investigate the feasibility of an annual renewal for registered athlete trainers with a second by Greg Hill. The motion passed unanimously.

MOTION:

Jeremy Ainsworth moved to require students, who had erroneously been exempt from registration, to pay an annual prorated registration fee equal to what every other athlete trainer pays starting on July 1, 2011. A second was made by Greg Hill. The motion passed unanimously.

McMillan advised the board that the motion to charge students with an annual fee or any other change in qualification terms will make it necessary for the Legislation and Rules Committee to meet and determine qualifications, the fee amount, or any other stipulations. After further discussion Jeremy Ainsworth *withdrew his motion*.

McMillan stated her division will work up a recommendation for the board regarding the feasibility of an annual renewal for registered athlete trainers. An email will then be sent to board members and the agency may then schedule a telephone conference for the board to discuss and vote on the proposed recommendations.

Sellers recommended the board hold up on any mailing out of the draft letter regarding student registration until the Legislation and Rules Committee meets on March 16, 2011, where it can be further discussed.

-Exemption of Elementary or Secondary School Teachers

Sellers referred to an email sent by board member, Jeremy Ainsworth, to Sellers regarding discussions held at the Legislation and Rules Committee meeting and prior board meetings on ORS 688.718(3) "Nothing in ORS [688.701 \(Definitions for ORS 688.701 to 688.734\)](#) to [688.734 \(Disciplinary authority of Oregon Health Licensing Agency\)](#) shall be construed to require registration of elementary or secondary school teachers, coaches or volunteers who do not hold themselves out to the public to be athletic trainers." [1999 c.736 §6]

Ainsworth's question concerned the definition of the term "public" if teachers presented themselves to the parents of student athletes as an athlete trainer. Sellers stated that the answer from the agency's AAG was that any change would require legislative action. The term "public" has a broader scope than the enclosed environment within a school. So the exemption would stand unless and until the statute is

changed. Sellers remarked the agency had received complaints on the above issue that the Regulatory Operations Division of OHLA investigated and the complaints were determined to be unfounded because of the exemption. Sparks added that the complaints involved high school teachers and volunteers and that they were not otherwise purporting or holding themselves out to be athlete trainers, although they were providing athletic training services.

- Spreadsheet Comparing OHLA List of Registered ATs and BOC-Certified ATs

McMillan presented two spreadsheet lists developed by Mike Simpson, Budget and Statistical Analyst, to compare data provided by BOC and the agency's own licensing database. McMillan noted there were address discrepancies and the information provided by BOC did not show where the certified AT worked. The first page was a list of athletic trainers who are suspected to be working in Oregon without registration or may be exempt; the second page was a list of athletic trainers who were previously registered, but now appear to be working in Oregon on an inactive or expired registration.

McMillan explained if the board wished to have the list investigated, the agency would have to open each investigation individually, which may be costly. Sellers stated she had performed some brief internet searches on a few of the names and had found practicing physical therapists (PT) who had also listed themselves as certified athlete trainers (ATC) but were not purporting to be registered athletic trainers. The board may elect to send out a letter explaining registration requirements and warning people on the list to do so if practicing AT functions.

Ainsworth stated there may be names on the list of persons who have had a name change, and cited an example from the list that he personally knew had a name change due to marriage.

Questions included: If individuals present themselves as a PT and are performing the functions of an AT can they present themselves as an ATC? Or, if they are using a business card with ATC on it at their place of business are they promoting themselves as an AT even if not actually performing AT functions in their practice? Can they claim to be a certified athlete trainer as long as they do not claim to be a registered athlete trainer? Sellers stated if individuals are functioning as a PT there may be crossover in scope of practice with an AT, and if PTs are not performing functions attributable only to a registered AT should they be able to list that they are a certified athlete trainer on their credentialing materials, their website, their business cards, etc.? Sellers continued, PTs may have attained ATC certification, but they are not functioning as an athlete trainer in that exclusive scope of duties. Cagle stated by using ATC on their materials, they are giving the perception that they are practicing athlete trainers. Sellers questioned if the board has the statutory right to require that PTs register as athlete trainers if they use ATC. Sellers stated the issue may require legal advice as it is in a gray area and the scopes of practice may overlap. Sellers stated if there is not a perceived health and public safety risk, is the concern just to protect the scope of practice for the AT profession? She said that is where the board may need legal advice. Cagle mentioned BOC is also concerned with this issue, so the board may receive some guidance from the BOC. McMillan pointed out in statute no one may claim to be a *registered* athlete trainer, but the PTs under discussion are not claiming to be registered athlete trainers, but certified athlete trainers.

Sellers stated this may be part of legal advice that we are waiting for from DOJ on the overlap of the scope of practice between PT and AT. Once we have a clear delineation of what an athlete trainer can do that a physical trainer cannot, then the board can be very clear in contacting those who are not registered

in Oregon, but who are BOC certified, and make sure they understand the distinction. If they are performing AT functions exclusively, they would be required to be registered.

McMillan asked board members to review the names on the spreadsheet provided and send her an e-mail if they have any information, for example, if the person no longer works as an athlete trainer, has had a name change, etc. Cagle asked how to proceed if an individual is practicing athletic training without registration. Sellers stated that Cagle, as an individual, could make a complaint to the agency's Regulatory Operations Division with an explanation as to why he believes they are performing the duties of an AT without being registered; she said it is important to provide as much supporting detail as possible, and the agency needs more information than just their name. Ainsworth asked if an exempt teacher working at a school advertises on his own website that he is an athlete trainer, can a complaint be made? Sellers answered yes, as now the teacher is purporting to the public to be an AT. Sellers recommended the Legislation and Rules Committee continue to discuss these issues at the March 16, 2011, meeting.

MOTION:

Greg Hill made a motion with a second by Jeremy Ainsworth to move the issue concerning the use of ATC in relation to unregistered athlete trainers to the Legislation and Rules Committee. If the committee requires more clarification from DOJ, the board has authorized the committee to seek legal advice. The motion passed unanimously.

-National BOC Convention in Omaha, Nebraska

Sellers stated at the last Legislation and Rules Committee members presented information about the National BOC Convention to be held in Omaha, Nebraska, on July 8-9, 2011. BOC has offered to pay for registration and the hotel for one member of the Board of Athletic Trainers and one OHLA staff member. Sellers stated that Director Randy Everitt will decide who, if anyone, from the agency will attend.

MOTION:

Jeremy Ainsworth moved to authorize airfare to Omaha, Nebraska, on July 8-9, 2011, for the National BOC convention for one board member and potentially one OHLA staff member. Greg Hill seconded the motion. Jeremy Ainsworth amended the motion to add a \$1,000 limit for airfare and uncovered meals or ground transportation costs per person for a board member and potentially an OHLA staff member to attend. Greg Hill seconded the amendment. The motion passed unanimously.

4. Items for Board Action

There were no items for board action at this time.

5. Public Comment

Comments were made by Shelly Jones, representing the Oregon Athletic Trainers Society (OATS). Jones would like the Legislation and Rules Committee to consider the issue of visiting athletes. In the interest of public health and safety the ATR will need to provide immediate care for these individuals regardless if the ATR has a full medical history for the visiting athlete. Jones also made a comment about the term "generally" interpretation by DOJ. Jones stated the term "generally" was a counter offer by OATS so as not to limit but to be more inclusive. Sellers stated public comment was not the place for questions and answers, but the Legislation and Rules Committee could further discuss Jones' comment at the next Legislation and Rules Committee where Jones will be attending as a subject matter expert.

Jones' last comment was about dual-credentialed individuals and she urged the board to consider flagging those individuals for immediate letters. Cagle asked the issue be on the agenda for the next Legislation and Rules Committee meeting.

6. Executive Session Placeholder

The board did not enter into executive session.

7. Other Board Business/Board Interest

There was no "Other Board Business" or "Board Interest File" at this time.

The meeting adjourned at approximately 12:37 pm.

Prepared by: Sinnamon Harris, Board Specialist