

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Athletic Trainers
Technical Review Committee

To the Nebraska State Board of Health, the
Director of the Division of Public Health, Department of Health and
Human Services, and the Members of the Health and Human
Services Committee of the Legislature

October 22, 2020

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

**LIST OF MEMBERS OF THE ATHLETIC TRAINERS TECHNICAL REVIEW
COMMITTEE, 2020**

Diane Jackson, APRN-FNP

Ed Discoe, MD

Jeffrey L. Howorth

Alice Kindshuh, DNP, RN, APRN-CNS

Ruth Lucas

Lisa Pfeil

Richard James Raska, DPM

Part Two: Summary of Committee Recommendations

The committee members unanimously approved the applicants' proposal as amended.

Part Three (A): Summary of the Applicants' Original Proposal

The NSATA would like to request revisions to specific statutes in the Nebraska Athletic Training Scope of Practice. Athletic trainers continue to hold a unique role in health care, and their skills, education, and populations served have continued to evolve. This ongoing change has now surpassed the boundaries of the current scope of practice. To ensure Nebraskans have access to the level of care they deserve and to protect their safety, it is necessary to adapt the current scope of practice to reflect this change including future advancement of the skills and education of athletic trainers. Appendix A shows the complete State of Nebraska Statutes relating to the Practice of Athletic Training (2017). The proposed changes to the practice act are as follows:

38-403 Athletic Injuries, defined.	
Current Statute	Proposed Language
Athletic injuries mean the types of musculoskeletal injury or common illness and conditions which athletic trainers are educated to treat or refer, incurred by athletes, which prevent or limit participation in sports or recreation.	38-403 Injuries and illnesses, defined. Means conditions and common illnesses which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

38-404 Athletic Trainer, defined.	
Current Statute	Proposed Language
Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 38-408. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-408 with a referral from a licensed physician for athletic training.	Athletic Trainer means a health care professional who is licensed to practice athletic training under the act and who under guidelines established with a licensed physician performs the functions outlined in section 38-405. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-405 with a referral from a licensed physician, osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, dentist, or chiropractor.

38-405 Athletic training, defined.	
Current Statute	Proposed Language
Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 38-408.	<p>Athletic training or practice of athletic training means providing the following regarding injuries and illnesses;</p> <ul style="list-style-type: none"> • Prevention and wellness promotion; • Examination, assessment and impression; <ul style="list-style-type: none"> ○ Impression defined: The estimated identification of the disease underlying a patient's complaints based on the signs, symptoms, medical history and physical examination of the patient rather than on laboratory examination or medical imaging. • Immediate and emergency care including the administration of emergency drugs. Drugs include those as defined in 38-2819 except for controlled substances; • Therapeutic intervention/rehabilitation of injury and illness in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function; • Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity; • Health care administration, risk management and professional responsibility; • Pursuant to 38-2025 (18) the Practice of Medicine and Surgery, no athletic trainer shall hold themselves out to be a physician, surgeon, or qualified to prescribe medications.

38-407 Practice Site, defined.	
Current Statute	Proposed Language
Practice site means the location where the athletic trainer practices athletic training.	Strike Section.

38-408 Athletic trainers; authorized physical modalities	
Current Statute	Proposed Language
<p>(1) Athletic trainers shall be authorized to use the following physical modalities in the treatment of athletic injuries under guidelines established with a licensed physician:</p> <ul style="list-style-type: none"> (a) Application of electrotherapy; (b) Application of ultrasound; (c) Use of medical diathermies; (d) Application of infrared light; and (e) Application of ultraviolet light. <p>(2) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.</p>	<p>Revise and move to section 38-405, under the fifth bullet point reading as: "Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity;"</p>

38-409. License required; exceptions.	
Current Statute	Proposed Language
<p>No person shall be authorized to perform the physical modalities set out in section 38-408 on any person unless he or she first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out to be an athletic trainer unless licensed under the Athletic Training Practice Act.</p>	<p>No person shall hold himself or herself out as an athletic trainer in this state unless such person has been licensed as such under the provisions of sections 38-401 to 38-414.</p>

38-410. Licensure requirements; exemptions.	
Current Statute	Proposed Language
<p>(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.</p> <p>(2) An individual who is a graduate student in athletic training and who is practicing under the supervision of a licensed athletic trainer is exempt from the licensure</p>	<p>(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.</p> <p>(2) An athletic training student who is enrolled in an accredited athletic training education program or in good standing, and who is practicing under the supervision of a licensed athletic trainer is exempt</p>

requirements of the Athletic Training Practice Act.

from the licensure requirements of the Athletic Training Practice Act.

38-411 Applicant for licensure; qualifications; examination.

Current Statute	Proposed Language
<p>(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:</p> <ul style="list-style-type: none">• Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or• Graduation with four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as a student athletic trainer under the supervision of an athletic trainer approved by the board. <p>(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.</p>	<ul style="list-style-type: none">• An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:<ul style="list-style-type: none">○ Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or○ Graduation with four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as an athletic training student under the supervision of an athletic trainer approved by the board.• In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Part Three (B): Summary of Amendments to the Applicants' Original Proposal

3) If the profession is currently credentialed in Nebraska, provide the current scope of practice of this occupation as set forth in state statutes. If a change in this scope of practice is being requested, identify that change. This description of the desired scope of practice constitutes the proposal. The application comprises the documentation and other materials that are provided in support of the proposal.

The NSATA would like to request revisions to specific statutes in the Nebraska Athletic Training Scope of Practice. The proposed amendments are summarized in the tables below with underlined red lettering for any additions, and strikethroughs for any language to be removed. Appendix A of the original application shows the complete State of Nebraska Statutes relating to the Practice of Athletic Training (2017). The proposed amendments to the initial proposal are as follows: **38-403 Athletic Injuries, defined.**

Current Statute

Athletic injuries mean the types of musculoskeletal injury or common illness and conditions which athletic trainers are educated to treat or refer, incurred by athletes, which prevent or limit participation in sports or recreation.

Initial Proposal

38-403 Injuries and illnesses, defined.
Means conditions and common illnesses which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

Proposed Amendments

38-403 Injuries and illnesses, defined.
Means injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreational, vocational, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals. An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.
· Vocational Defined: Of, relating to, or concerned with the work in which a person is employed
· Condition Defined: A disease, illness, or injury

Comments

The NSATA accepted the recommendation from the APTA-NE to use “*vocational*” and intends to define the term. The NSATA is proposing to add “*exercise, athletic, recreational, vocational, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina*”. The proposed language captures the types of injuries or common illnesses and conditions athletic trainers can treat as a result of their education and training. The amended language is consistent other state practice acts including Georgia, Missouri, Ohio, and Vermont. None of the states with similar language have seen an increase in the number of discipline cases since the implementation of their respective language. The NSATA contends that these proposed amendments continue to ensure public safety. For the public to access athletic training services, they must first obtain a referral from a licensed health care provider listed

in 38-404 when working in an outpatient setting. These services must be within the athletic trainer's scope of practice as well as their level of education and training. Additionally, the athletic trainer must maintain professional responsibility and recognize when any medical conditions associated with the patient are beyond their scope or education and training.

State Examples with Similar Language

Georgia

• 'Athletic injury' means any injury sustained by a person as a result of such person's participation in exercises, sports, games, or recreational activities, or any activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina without respect to where or how the injury occurs. Nothing in this paragraph shall be construed to expand the scope of practice of an athletic trainer beyond the determination of the advising and consenting physician as provided for in paragraph (2) of this Code section. ○ Link:

https://sos.ga.gov/plb/acrobat/Laws/17_Athletic_Trainer_43-5.pdf (Page 1)

○ Implementation: 2008

○ No increase in discipline cases in last five years

Missouri

• "Athlete", any person who engages in exercise, recreation, sport, or other activity requiring physical strength, agility, flexibility, range of motion, speed, or stamina; ○ Link: <file:///C:/Users/michael.roberts/AppData/Local/Microsoft/Windows/INetCache/IE/J2BIFE7J/4438H.06S.pdf> (Page 155)

○ Implementation: 2020

○ No data available related to the number of discipline cases tied to the new statutes at this time

Ohio

• "Athletic injury" means any injury sustained by an individual that affects the individual's participation or performance in sports, games, recreation, exercise, or other activity that requires physical strength, agility, flexibility, speed, stamina, or range of motion. ○ Link:

<https://www.otptat.ohio.gov/Portals/0/laws/AT%20Laws%20and%20Rules%2005-31-2019.pdf?ver=2019-05-31-150441-090> (Page 6)

○ Implementation: 2018

- o No increase in the number of discipline cases since implementation

Vermont

- "Athlete" means any individual participating in fitness training and conditioning, sports, or other athletic competition, practices, or events requiring physical strength, agility, flexibility, range of motion, speed, or stamina. o Link: <https://legislature.vermont.gov/statutes/fullchapter/26/083>
- o Implementation: 1999
- o No increase in the number of discipline cases in last five years

38-404 Athletic Trainer, defined.

Current Statute

Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 38-408. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-408 with a referral from a licensed physician for athletic training.

Initial Proposal

Athletic Trainer means a health care professional who is licensed to practice athletic training under the act and who under guidelines established with a licensed physician performs the functions outlined in section 38-405. When athletic training is provided in a hospital outpatient department or clinic, or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-405 with a referral from a licensed physician, osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, dentist, or chiropractor.

Proposed Amendments

Athletic Trainer means a health care professional who is licensed to practice athletic training under the act and who under guidelines established with a licensed physician performs the functions outlined in section 38-405. When athletic training is provided in a hospital outpatient department **or clinic**, or an outpatient-based medical facility or clinic, the athletic trainer will perform the functions described in section 38-405 with a referral from a licensed physician, osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, dentist, or chiropractor.

Comments

Inserted or clinic based on concerns from NCPA wanting to ensure that language would not create a scenario that allows for direct access. The NSATA's intent of the language is not to create direct access for athletic trainers in outpatient settings.

38-405 Athletic training, defined.

Current Statute

Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 38-408.

Initial Proposal

Athletic training or practice of athletic training means providing the following regarding injuries and illnesses;

- Prevention and wellness promotion;
- Examination, assessment and impression;
- Impression defined: The estimated identification of the disease underlying a patient's complaints based on the signs, symptoms, medical history and physical examination of the patient rather than on laboratory examination or medical imaging.
- Immediate and emergency care including the administration of emergency drugs. Drugs include those as defined in 38-2819 except for controlled substances;
- Therapeutic intervention/rehabilitation of injury and illness in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function;
- Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity.
- Health care administration, risk management and professional responsibility;
- Pursuant to 38-2025 (18) the Practice of Medicine and Surgery, no athletic trainer shall hold themselves

Proposed Amendments

Athletic training or practice of athletic training means providing the following regarding injuries or common and illnesses and conditions;

- Prevention and wellness promotion;
- Examination, assessment and impression;
- Impression defined: A summation of information and/or an opinion formed, which is the outcome of the examination and assessment process. ~~The estimated identification of the disease underlying a patient's complaints based on the signs, symptoms, medical history and physical examination of the patient rather than on laboratory examination or medical imaging.~~
- Immediate and emergency care including the administration of emergency drugs. Drugs include those as defined in 38-2819 except for controlled substances;
- Therapeutic intervention/rehabilitation of injuries and common illnesses and conditions in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function;
- Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity.

Comments

Inserted "injuries or common illnesses and conditions" to ensure continuity with 38-403. Inserted definition of medical impression based on NCPA's concern with using clinical diagnosis to define impression. Inserted language excluding athletic trainers from performing grade V manipulations based on concerns from NCPA. Updated exclusionary language to better delineate where grade I-IV mobilizations end and grade 5 manipulations commence. Dry Needling- Based on 2016 AG opinion dry needling is considered a mechanical modality. The NSATA plans to address education and training requirements to be able to perform dry needling in rules and regulations.

out to be a physician, surgeon, or qualified to prescribe medications.

~~omobilizations/manipulation of a trust joint manipulation, high velocity/low amplitude thrust, no any procedure intended to result in joint cavitation. Joint manipulation/low amplitude thrust where grades one through four mobilization ends joint cavitation. health care administration, risk management and professional responsibility; mobilization ends.~~
- Pursuant to 38-2025 (18) the Practice of Medicine and Surgery, no athletic trainer shall hold themselves out to be a physician, surgeon, or qualified to prescribe medications.

38-407 Practice Site, defined.

Current Statute

Practice site means the location where the athletic trainer practices athletic training.

Initial Proposal

Strike Section.

Proposed Amendments

Strike Section.

Comments

No amendments made. No comments or concerns from Technical Committee, NMA, NCPA, APTA-NE, NOTA.

38-408 Athletic trainers; authorized physical modalities

Current Statute

(1) Athletic trainers shall be authorized to use the following physical modalities in the treatment of athletic injuries under guidelines established with a licensed physician:

- (a) Application of electrotherapy;
- (b) Application of ultrasound;
- (c) Use of medical diathermies;
- (d) Application of infrared light; and

Initial Proposal

Revise and move to section 38-405, under the fifth bullet point reading as: "Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity;"

Proposed Amendments

Revise and move to section 38-405, under the fifth bullet point reading as: "Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity;"

Comments

No amendments made. No comments or concerns from Technical Committee, NMA, NCPA, APTA-NE, NOTA.

(e) Application of ultraviolet light.
(2) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.

38-409. License required; exceptions.

Current Statute

No person shall be authorized to perform the physical modalities set out in section 38-408 on any person unless he or she first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out to be an athletic trainer unless licensed under the Athletic Training Practice Act.

Initial Proposal

No person shall hold himself or herself out as an athletic trainer in this state unless such person has been licensed as such under the provisions of sections 38-401 to 38-414.

Proposed Amendments

No person shall hold himself or herself out as an athletic trainer in this state unless such person has been licensed as such under the provisions of sections 38-401 to 38-414.

Comments

No amendments made. No comments or concerns from Technical Committee, NMA, NCPA, APTA-NE, NOTA.

38-410. Licensure requirements; exemptions.

Current Statute

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.
(2) An individual who is a graduate student in athletic training and who is practicing under the supervision of a licensed athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

Initial Proposal

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.
(2) An athletic training student who is enrolled in an accredited athletic training education program or in good standing, and who is practicing under the supervision of a licensed athletic trainer is exempt

Proposed Amendments

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.
(2) An athletic training student who is enrolled in an accredited athletic training education program or in good standing, and who is practicing under the supervision of a licensed athletic trainer is exempt

Comments

No amendments made. No comments or concerns from Technical Committee, NMA, NCPA, APTA-NE, NOTA.

from the licensure requirements of the Athletic Training Practice Act.

from the licensure requirements of the Athletic Training Practice Act.

38-411 Applicant for licensure; qualifications; examination.

Current Statute

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:

(a) Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or

(b) Graduation with four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as a student athletic trainer under the supervision of an athletic trainer approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Initial Proposal

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:

a. Graduation after successful completion of the athletic training curriculum requirements of an accredited college or university approved by the board; or

b. Graduation with four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as an athletic training student under the supervision of an athletic trainer approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Proposed Amendments

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that he or she meets one or more of the following qualifications:

a. Individuals graduating prior to January 1, 2004 must provide proof of:

i. Graduation after successful completion of the curriculum requirements of an accredited athletic training education program at ~~athletic training curriculum requirements~~ of an accredited college or university approved by the board; or

ii. Graduation with four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as an athletic training student under the supervision of an athletic trainer approved by the board

b. Individuals graduating after January 1, 2004, must provide proof of graduation after successful completion of the curriculum requirements of an accredited

Comments

Per the recommendation from the NCPA, inserted grandfather language for athletic trainers who became certified via internship route and graduated prior to January 1, 2004.

No additional comments or concerns expressed after NMA, NCPA, APTA-NE, and NOTA reviewed amended language for this statute.

athletic training education program at an accredited college or university approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

The full text of the most current version of the applicants' proposal can be found under the Athletic Trainers in the credentialing review program link at <http://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Discussion on issues by the Committee Members

Proponent arguments in support of the proposal

- ***The what and why of the proposal:***

Applicant group representatives stated that the goal of their proposal is to update and modernize athletic trainer scope of practice to make it more consistent with current education and training which is now much more broad-based and extensive than it was the last time athletic trainer scope of practice was revised back in the late 1990's. The applicants added that their profession is in the process of making a Masters degree a requirement for licensure.

According to the applicants current statutes pertaining to athletic training in Nebraska impose too many limitations on athletic trainers vis-à-vis the services they can provide and to whom these services would be provided to. Currently, athletic trainers are only allowed to provide their services to athletes. During the previous review of athletic trainer scope of practice in 1998 the profession was criticized for a lack of sufficient education and training to treat non-athletic patient populations. Since then educational and training standards for the profession have greatly improved with required clinical experiences that expose students to a wide variety of patient populations and which address the continuum of care from pediatrics to geriatrics including patient co-morbidities. Athletic trainers should not be limited from providing services to their patients by statutory language that fails to reflect the improvements in education and training that has occurred within the profession since 1998.

- ***Why the applicants believe the proposal fits the statutory criteria of the CR Program:***

The applicants stated that the scope of practice being proposed for athletic trainers would improve access to important, safe, cost-effective, and high quality care for non-athletes in Nebraska that maximizes the independence and freedom of choice of the consuming public, supporting their contention that the proposal does satisfy the statutory criteria of the Credentialing Review Program.

The applicants stated that an athletic trainer's education and training when combined with statutory language that requires each athletic trainer to practice under guidelines established for them by a physician prepares them to work with a diverse population of patients outside of those defined as "athletes." Athletic trainers are trained and educated to perform a wide variety of tasks utilizing many mechanical modalities via multiple didactic and clinical experiences.

Athletic trainers are not directly supervised by physicians but do work under guidelines established cooperatively with physicians. If an athletic trainer is working in a hospital outpatient department or clinic or an outpatient-based medical facility a referral from a licensed physician is required for the conduct of these services. The educational standards established in 2012 require a progression of clinical supervision that eventually leads to relatively autonomous functioning by the athletic trainer of the skills that comprise athletic scope of practice. The scope of practice being proposed by the applicants' proposal would be implemented in this very same manner.

Committee questions and comments about the applicants' proposal

- One committee member was complementary to the applicant group for proposing the addition of emergency medications in the scope of practice of athletic trainers for the purpose of advancing public safety and protection in certain medical emergency situations, including the use of epi-pens, for example.

Another committee member asked the applicants why they perceive the current scope of practice as being too limiting. The applicants indicated that they need to have more opportunities to treat more diverse elements of the population than just "athletes," per se, and this proposal offers them these kinds of opportunities. The applicants went on to say that the proposal offers patients with more options when it comes to choosing a provider than under the current practice limitations.

A committee member commented that some of the wording in the proposal is too open-ended and that the applicants need to more clearly define the patient population that the proposal would allow them to treat and what they'd be treating them for if it were to pass. This same committee member asked the applicants to clarify who would be liable for a bad outcome, the athletic trainer in question, or, a supervising physician? The applicants responded that they work under guidelines established for them by their Board, not under the supervision of another health care provider, adding that these guidelines are adapted to fit specific practice situations of each athletic trainer. Such guidelines would vary greatly from a collegiate athletic context to an outpatient context wherein non-athletes would be the patients.

A committee member commented that he sees a need for more education and training for athletic trainers in order to provide the services defined for them in the proposal. The applicants responded that their profession intends to greatly enhance athletic trainer education and training and eventually make the attainment of a Masters degree as a prerequisite for licensure. Another committee member asked the applicants for the percentage of athletic trainers in Nebraska who already have a Masters degree. The applicants responded that they did not have this information vis-à-vis Nebraska but that they know that, nationally, the percentage of athletic trainers who have a Masters degree is about seventy-percent. Another committee member asked whether there are

opportunities to attain a Ph.D. degree in athletic training. The applicants responded in the affirmative, adding that these opportunities will be greatly enhanced in the very near future.

Opponent questions and concerns about the applicants' proposal

- **Comments From Representatives of the Nebraska Physical Therapy Association (NPTA)**

One NPTA representative commented that the wording of the proposed scope is too broad and would allow athletic trainers to provide services beyond their competency. She added that other professions such as occupational therapy and physical therapy are already providing many of the services identified in the applicants' proposal as being added to athletic trainer scope of practice. They went on to state that there is no clear public need for many of the proposed additions to athletic trainer scope of practice. The applicants responded that the members of the public should have access to alternative health care choices, and this proposal offers them another choice of provider.

One NPTA asked the applicants if they are heading in the direction of Board certification and a Ph.D. level of clinical practice. The applicants responded in the affirmative to this question.

One NPTA stated that wording in the proposal pertinent to illnesses and injuries raises concerns for her profession and that she would soon be submitting a letter to the committee detailing these concerns. This physical therapist added that in general these terms are being defined too broadly by the applicant group.

- **Comments made about the proposal by an NPTA representative in a letter to the members of the technical review committee dated July 28th 2020**

This NPTA letter quoted and then commented on the amendment made by the applicant group to their original proposal, the text of which is as follows:

The amendment refers to "injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreational, **vocational, or** activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

The NPTA letter went on to state that NPTA asked the applicants to strike the "**or**" between "**vocational**" and "**activities**" to create the term "vocational

activities” but that the applicant group would not agree to this. The letter went on to state that NPTA cannot support the amended version of the proposal because it would expand the scope of athletic trainer services to treat the conditions of vulnerable, non-athlete populations of our state, right away, as soon as a legislative version of the proposal becomes law. Given that it will take at least until 2022 for the entirety of the proposed masters degree education and training program to become established as part of the education and training of all athletic trainers passing the proposal creates a situation in which there is at least the potential for significant risk of harm to the public health and welfare.

The letter went on to state that there is a need for an additional amendment to the proposal which would state as follows:

“Pursuant to 38-2919 in the practice of Physical Therapy, no athletic trainer shall hold themselves out to be a physical therapist or qualified to provide physical therapy.”

The letter goes on to state that this proposed amendment would allow athletic trainers to specifically state that they are performing athletic trainer services and not physical therapy services. This would help maintain a distinction between these respective professions for the sake of public safety and protection. The letter goes on to state that until such an amendment is made part of the proposal NPTA cannot support it.

- ***Applicant group responses to NPTA concerns***

The applicants responded to comments made by NPTA in their July 28, 2020 letter about the amended version of the proposal in which NPTA expressed their opposition to the amended version of the proposal as still being too broad. This amended version of the proposal now includes the following revised wording to Section 38-403: “athletic, recreational, or vocational activity” to describe proposed scope limits for athletic trainers. The applicants made the observation that similar language appears in the licensure statutes for athletic trainers in the following states since 1999: Georgia, Missouri, Ohio, and Vermont. None of these states have shown an increase in the number of disciplinary cases since the inception of the inclusion of this language in their respective athletic trainer statutes.

The applicants responded to NPTA concerns about the up-skilling of athletic trainers vis-à-vis new educational standards which took effect on July 1, 2020. The applicants made the observation that the scopes of practice of all licensed health providers includes advanced skills that are not learned at the entry level, and that because of this all practice acts should evolve as new demands occur and professional capabilities improve. They went on to state that since 2016 the Board of Certification for Athletic Trainers has approved literally thousands of continuing

education courses for athletic trainers treating members of the general public, specific illnesses and conditions, industrial workers, lifespan-related issues and conditions, and of course, athletes. The applicants added that although the accreditation standards in question only went into effect on July 1, 2020, it is important to realize that standards of practice pertinent to the treatment of non-athletes with co-morbidities has been part of athletic trainer education and training since 2012.

The applicants reminded disinterested observers that the public does not have direct access to the services of athletic trainers. Patients can only access these services via a referral from another licensed health care provider. These realities of athletic trainer practice help to ensure that athletic trainer services occur within the scope of practice of the profession and that they must be consistent with the education and training of an athletic trainer. However, to provide additional assurance that athletic trainers will not practice beyond their licensed scope, the applicants have included specific language stating that athletic trainers will not provide services that are prohibited to them under the law.

- ***Comments From the Nebraska Occupational Therapy Association (NOTA)***

Representatives of the Nebraska Occupational Therapy Association and the Nebraska Physical Therapy Association expressed support for some aspects of the applicants' proposal but also expressed reservations about some other aspects of this proposal. One occupational therapist stated that the definition of what constitutes an injury in the applicant's proposal raises concerns for her profession.

One occupational therapist asked the applicants if athletic trainers receive training in providing outpatient care. Another occupational therapist asked the applicants if athletic trainers receive clinical rotation training.

One occupational therapist expressed concerns about some of the terminology in the proposal that creates confusion regarding what kinds of conditions athletic trainers can treat.

- ***Comments made about the proposal by an NOTA representative in a letter to the members of the technical review committee dated July 28th 2020***

This letter commented on the recent amendment made by the applicant group to their proposal. The NOTA letter expressed concern about the wording of this amendment pertinent to the definition of the kinds of injuries, common illnesses, and conditions that athletic trainers would be allowed to treat under the terms of the proposal if it were to pass. The wording in question is cited below and

includes the term **“vocational”** which is a concern to the author of the NOTA letter:

The amendment refers to “injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreational, **vocational**, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

The NOTA representative indicated that the term **vocational** is too broad a term and that it could confuse the public regarding the role and preparation of athletic trainers vis-à-vis other rehabilitation professions such as occupational therapy and physical therapy, for example. The letter cites an example wherein an office worker who has been diagnosed with carpal tunnel syndrome might be referred to an athletic trainer for treatment when their injury might better be dealt with by an occupational therapist. This would be a safety risk for this patient.

The letter goes on to suggest that the term **vocational** be replaced by the term **“tactical athletic activities”**. This term would better clarify what services athletic trainers are best prepared to provide. The letter went on to state that without this suggested change NOTA would continue to oppose the applicants’ proposal.

- **Applicant group responses to NOTA concerns**

The applicants stated that in an effort to address concerns raised by both NOTA and NPTA representatives who have argued that their proposal is too broad they have spent a great deal of time and effort negotiating with the representatives of both of these professions to resolve these outstanding differences. These negotiations resulted in new wording in the proposal for delimiting athletic trainer scope of practice. The following changes were included as components of an amendment to the original proposal: 1) Revised wording to Section 38-403 was made as follows: “athletic, recreational, or vocational activity” was included to describe proposed scope limits for athletic trainers, and, 2) a clarification of athletic trainer care was provided stating that this care focuses on: “exercise, athletic, recreational, vocational, or activities, requiring physical strength, agility, flexibility, range of motion, speed, or stamina.”

NOTA representatives indicated that they could not accept the inclusion of the term **“vocational”** in the amended proposal and suggested that, instead, the applicants use the term **“tactical athletic activities.”** The applicants responded that NOTA’s suggested term would be too restrictive for athletic trainers to accept because it would greatly narrow the patient population that could have access to athletic trainer services. NOTA representatives expressed the concern that any

broader definition would risk new harm to the public health and welfare. The applicants countered that the only way patients could access athletic trainer services in an outpatient context would be via referral from other licensed health care providers, and that this process provides adequate protection for the public health and welfare.

- **Comments From the Nebraska Chiropractic Physicians Association (NCPA)**

A representative of the Nebraska Chiropractic Physicians Association expressed concerns about some provisions of the current athletic trainer proposal, particularly those pertinent to the following: 1) diagnosis of illnesses and conditions, 2) the ability of athletic trainers to utilize grade five mobilization, 3) the ability of athletic trainers to utilize manual manipulation, 4) the ability of athletic trainers to utilize dry needling, and 5) the effectiveness of oversight of the profession under the terms defined by the current proposal.

Chiropractic representatives discussed issues pertinent to portal of entry care with athletic trainer representatives including oversight and referral provisions defined in the proposal. A Chiropractic representative went on to state that these aspects of the proposal need to be clarified for practice situations that would be occurring outside of the context of an athletic department or facility in which non-athletes are being treated.

One Chiropractic representative stated that the applicant group needs to clarify who would be grandfathered if their proposal were to pass. This representative asked whether non-Masters' Degree trainers would be grandfathered to allow them to provide the same kinds of services that a Masters' Degree athletic trainer would be licensed to provide. He added that answers to these kinds of questions are important for determining if the proposal would provide for safe and effective services to the general public.

One Chiropractic representative asked the applicants whether or not the applicants intend to perform grade five manipulations. One applicant representative replied that it is not the intent of the applicant group to allow athletic trainers to perform these kinds of procedures.

- **Comments made by an NCPA representative about the proposal in a letter to the members of the technical review committee**

A representative of the Nebraska Chiropractic Physicians Association articulated the following concerns about the applicants' proposal: 1) NCPA's primary concern pertains to the degree of expansion of athletic trainer scope of practice defined in the proposal which seems to seek the establishment of athletic trainers

as portal of entry providers. The proposal includes provisions about treating illnesses and conducting examinations, assessments, and impressions, terms which imply the ability to diagnose a patient's health condition. This NCPA representative stated that to allow athletic trainers to move from their current status treating athletes only under the supervision of a physician to a role as a portal of entry provider with only limited changes to their educational curriculum would be a mistake that could result in serious harm to Nebraska patients; 2) another NCPA concern is that the proposal would allow athletic trainers to conduct grade five manipulations, a procedure that only Chiropractors are qualified to provide. This particular modality has been added to athletic trainer scope of practice in some other states in recent years even though there is little evidence that athletic trainer education and training has been enhanced to support the safe and effective utilization of this modality by athletic trainers; 3) another NCPA concern is that the proposal would allow athletic trainers to perform dry needling and acupuncture, modalities that their current education and training does not support. Currently, athletic trainers can practice with only a bachelor's degree or with a bachelor's degree in any other discipline and the completion of two years of on-the-job-training with an athletic trainer approved by their board. The current proposal states that the athletic trainer profession is moving towards requiring a masters degree for licensure. However, NCPA has not seen the details associated with this new, proposed education nor what exactly it would qualify them to do that they cannot do now. Furthermore, even with this move towards a masters degree their proposal would continue to allow for the two-year, on-site training option to qualify as an athletic trainer. There seems to be no assurance of competency in critical areas of care that would come under the purview of athletic trainers if the proposal were to pass such as assessment and diagnosis of illnesses and conditions, for example, or differentiating musculoskeletal injuries from such things as cancer, for example; 5) the services being requested for an expanded athletic trainer scope of practice are already being provided in a safe and effective manner by Chiropractors, Physical Therapists, Occupational Therapists, and Physicians. The current athletic trainer proposal does not offer a safe and effective alternative to the services already provided by these health care professionals.

- ***Applicant group responses to NCPA concerns***

The applicants seek to make it clear that they are not interested in becoming portal of entry providers, or, in any other way, attempting to become independent providers. The applicants added that this means that the only way non-athletes could access the services of an athletic trainer would be via a referral from either a physician or a chiropractic physician.

The applicants clarified that as a result of previous discussions between chiropractic representatives and athletic trainer representatives, diagnosis was

removed from the proposal, as well as the use of laboratory examination or medical imaging.

The applicants clarified that their proposal would include chiropractors on a list of professions that could make referrals to athletic trainers. This list would also include the following professions: podiatrists, nurse practitioners, dentists, physician assistants, and of course, medical doctors.

The applicants clarified that their proposal would not allow athletic trainers to practice emergency medical services or chiropractic medical services. Nor would it allow athletic trainers to practice acupuncture, although in some instances dry needling as a modality would be allowed. However, athletic trainers could only provide this, latter modality under guidelines established by a medical doctor.

The applicants clarified that allowing the continuance of the two-year, on-site training option to qualify as an athletic trainer is being proposed for grandfathering purposes only.

Later on in the review process an NCPA representative expressed approval of the amended version of the proposal submitted by the applicant group to the members of the technical review committee during its July 28th 2020 meeting, and indicating that the amendment had successfully addressed the concerns that NCPA had previously articulated about the applicants' proposal.

- ***Additional concerns expressed by NOTA representatives***

October 7, 2020

Dear Members of the Athletic Trainers Technical Review Committee,

This letter is in response to the last 407 credentialing review process for the Nebraska State Athletic Trainers Association (NSATA) held on September 2, 2020. We would like to take this opportunity to provide feedback and rebuttal on information presented during testimonies, as well as provide a response to NSATA's written statement to our letter submitted for the committee meeting.

The NSATA's proposed language in section 38-403 Athletic Injuries, defined. imparts a significant scope of practice change that is highly debatable depending on the individual and profession one represents. NOTA initially requested numerous changes to NSATA's proposed scope of practice language, and NSATA did not agree to any of our initial recommendations. NOTA compromised in agreeing to NSATA's proposed language in sections 38-404 and 38-405 if clarity could be provided to section 38-403 because it sets the precedent for sections 38-404 and 38-405. NSATA made changes to section 38-403, but utilized different language to state the same depth of expansion. NOTA's concern here is twofold.

First, it is important to address the language utilized to define section 38-403 as it guides all decision making for an athletic trainer. NSATA has been consistent in the concerns brought forth to NSATA with the use of the term “vocational.” As mentioned in testimony, the state examples provided in NSATA’s Initial Application (Colorado, Idaho, Washington, Wyoming), as well as those included in NSATA’s submission for the third technical review committee (Georgia, Missouri, Ohio, Vermont), do not include the language “vocational” to define an athletic injury:

Example State’s Definitions of “Athletic Injury” provided by NSATA	
Colorado	Colorado "injuries and illnesses" includes those conditions in an athlete for which athletic trainers, as the result of their education, training, and competency, are qualified to provide care.
Idaho	"Athletic injury" means a physical injury, harm, hurt or common condition (such as heat disorders), incurred by an athlete , preventing or limiting participation in athletic activity, sports or recreation, which athletic trainers are educated to evaluate and treat or refer to the directing physician.
Washington	"Athletic injury" means an injury or condition sustained by an athlete that affects the person's participation or performance in exercise, recreation, sport , or games and the injury or condition is within the professional preparation and education of an athletic trainer.
Wyoming	"Athletic injury" means: (A) An injury or athletic-related illness or both that affects the athlete's participation or performance in sports, games and exercise related to participation with an educational institution or professional, amateur or recreational sports club or organization; and (B) A condition that is within the scope of practice of an athletic trainer identified by a directing physician as benefiting from athletic training services.
Georgia	'Athletic injury' means any injury sustained by a person as a result of such person's participation in exercises, sports , games, or recreational activities, or any activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina without respect to where or how the injury occurs. Nothing in this paragraph shall be construed to expand the scope of practice of an athletic trainer beyond the determination of the advising and consenting physician as provided for in paragraph (2) of this Code section.
Missouri	"Athlete", any person who engages in exercise, recreation, sport , or other activity requiring physical strength, agility, flexibility, range of motion, speed, or stamina;
Ohio	"Athletic injury" means any injury sustained by an individual that affects the individual's participation or performance in sports , games, recreation, exercise, or other activity that requires physical strength, agility, flexibility, speed, stamina, or range of motion.
Vermont	"Athlete" means any individual participating in fitness training and conditioning, sports , or other athletic competition, practices, or events requiring physical strength, agility, flexibility, range of motion, speed, or stamina.

There is no evidence to support the inclusion of the language “vocational” that is provided “by unbiased sources, sources that explicitly take into account the protection of the public and which provide statistical or scientific data to support conclusions,” as per page 17 of the Credentialing Review Manual. Therefore, NOTA suggested the language that more clearly articulates the desired population NSATA is wanting to work with “tactical athletes” (e.g. firefighters, military, police, etc.) with using “tactical athletic” instead of “vocational.”

Additionally, upon further examination of the aforementioned definitions, it is concerning that all of the provided definitions include either the word “athlete” or “sport” and NSATA’s proposal includes *neither*. This should be a concern to the technical review committee when reviewing the proposed definition of an “athletic injury.” The varied use of nouns and adjectives also makes it hard to understand which clauses or phrases correlate to each other within the first sentence, and this presentation of language can have a remarkable impact on how a person interprets the definition.

NSATA Proposed Language for 38-403	NOTA Language Recommendation for 38-403
<p>Means injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreational, vocational, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals. An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.</p> <p>Vocational Defined: Of, relating to, or concerned</p>	<p>Means injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreation, or tactical athletic activities that require physical strength, agility, flexibility, range of motion, speed, or stamina, and which athletic trainers as a result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals. An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide, or that he or she is otherwise prohibited by law from providing.</p> <p>Condition Defined: A disease, illness, or injury</p>
<p>with the work in which a person is employed</p> <p>Condition Defined: A disease, illness, or injury</p>	

In response to NSATAs’ response to NOTA’s testimony from the September 2, 2020 technical review meeting, NOTA is also concerned that NSATA is refusing to update their language with recommendations in an effort to insert statutory language that is based on promoting the professional interests of their members as much as they are attempting to serve additional populations, which they claim are underserved. There is no evidence that these populations are underserved. While we understand the purpose of a professional organization, we are disappointed that NSATA would claim NOTA is promoting the interests of their members by expressing concern for public safety, when, in fact, NSATA is expanding their scope of practice through the 407 process to benefit their members. Both professional concerns are different sides of the same coin.

There is additional concern with proponents, such as Jacobsen, indicating having an athletic trainer would “increase productivity in the office.” Increasing the productivity and ability of physicians to see more patients in an office is not a valid reason to widen the scope of athletic trainers. Reasoning to update the scope to benefit a physician’s productivity is an ethical concern the review committee should not ignore. What does the proposed scope of practice language in 38-403 Athletic Injuries, defined. really intend to do?

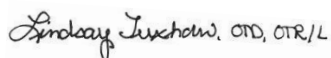
NOTA’s second concern with the proposed language in section 38-403 is that the depth of education does not warrant the significant expansion requested by NSATA. It is not clear if Criterion 4 set forth in the Credentialing Review Program section 4-008 “Criteria and Standards for a Change in Scope of Practice of a Regulated Profession” has been met.

Testimony was given that the current academic standard for athletic trainers requires four weeks of non-athlete settings with simulations being acceptable for their fieldwork experience. This equates to 160 hours of experience with non-athletes in stark comparison to the education of occupational therapists, which includes both Level I fieldwork, where hours vary by program, and 960-1,600 hours of Level II fieldwork, which is the equivalent of 24 (minimum) to 40 full time work weeks, depending on whether the student is pursuing their Master or Doctorate degree. These experiences occur across multiple practice settings with a variety of diagnoses and ages from birth to death. The Accreditation Council for Occupational Therapy Education (ACOTE) standard for occupational therapy does not allow for simulation in place of contact hours for Level II fieldwork. Although the current athletic trainer academic standards require experience in non-athlete settings, and current and future graduates may meet this requirement, all those who graduated prior to these standards being in place would not have had experience with non-athletes in their education.

NOTA is in support of NSATA’s desire to expand their scope of practice; however, NOTA is concerned that the rationales and evidence provided throughout the application do not provide adequate evidence, as noted in the Credentialing Review Manual, to justify the language used to define section 38-403 Athletic Injuries, defined. The information provided in the application is overall vague, and the evidence does not appear to meet the requirements set forth in the 407 process. While there were quite a few proponent testimonies, these were however anecdotal, were not from unbiased sources, and therefore do not support the change to public policy in regard to athletic trainers expanding their scope of practice (and this is according to the language from the Credentialing Review Manual (pg. 17)).

NOTA’s concern has remained the same. The language of section 38-403 must be clarified for the safety of the general public. We hope our more robust analysis and explanation is helpful. If you have further questions for us, please contact us at our provided emails.

Respectfully,



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- **Additional Concerns Expressed by NPTA Representatives:**

To: Technical Review Committee, 407 Process for Athletic Training Practice Act Proposed Revisions

October 9, 2020

Dear Technical Review Committee and the Nebraska State Athletic Training Association

We have reviewed the comments submitted by the Nebraska State Athletic Trainers' Association (NSATA) in response to our testimony at the September 8th public hearing. We want to state that we appreciate other professions pursuing the advancement of their professional Practice Act and the NSATA's willingness to meet with us on a regular basis during this process. Our involvement in this process has been to review the athletic trainers' proposed revisions to their practice act to ensure it protects the health and safety of Nebraskans. In our previous discussions with the NSATA and the Technical Review Committee we have voiced our concerns about the words in 38-403 Injuries and illnesses, defined "or activities requiring physical strength, agility, flexibility, range of motion, speed and stamina". We provided testimony that this language was too broad and did not give the athletic trainers any "guardrails" for their practice.

NSATA has described certain situations in which they believe ~~they~~ Athletic Trainers (AT) have the expertise and education to effectively render care to other individuals -besides just those engaged in exercise, athletic, recreational, or vocational activities. ~~This is which was~~ their reason for adding the word "or" in the definition outlined in 38-403. We believe ~~that~~ there are situations in which ~~that~~ an athletic trainer could render effective care to individuals outside of ~~the~~ athletic, recreational and vocational activities. ~~effectively and because of this~~ ~~at~~, we no longer are opposing this particular language. ~~However, we~~ we do believe ~~though~~ that physician supervision, referral responsibilities, scope of practice and documentation of services need to be more defined and clarified to protect the health and well-being of Nebraskans. **We will not support any practice act revisions unless these areas are addressed in their proposal.**

Currently, the National Association of Athletic Trainers' ~~Association on their website~~ (NATA) ~~describes defines~~ an Athletic Trainer as follows: ~~a~~

"Health care professionals who render service or treatment, under the direction of or in collaboration with a physician, in accordance with their education and training and the state's statutes, rules, and regulations. As a part of the health care team, services provided by athletic trainers include primary care, injury and illness prevention, wellness promotion and education, emergent care, examination and clinical diagnosis, therapeutic intervention, and rehabilitation of injuries and medical conditions." ~~1-NATA website~~

NATA wants athletic trainers to be recognized as health care professionals. ~~Being recognized as a health care professional elevates the responsibilities of the profession, and requires the following: A health care profession:~~

1. ~~Is licensed through the state~~ State licensure
2. ~~An established~~ Have a formal licensure board
3. ~~Have a~~ well-defined scope of practice
4. ~~Clf supervised, well-clarified~~ supervision parameters, ~~if supervised~~
5. Clearly stated documentation of services provided

~~Upon reviewing~~ ~~Currently looking at~~ the ~~current~~ proposed practice act revisions, we do not see adequate wording in the area of practice scope, physician supervision, or requirements for documentation of services rendered. We suggest ~~that~~ in order to protect the public, ~~that~~ the practice act revisions include further clarification and guidance for supervision, referral, scope of practice and documentation if the athletic trainer wants to have a practice act that allows them to see a ~~very broad diverse population range of people~~ with a very broad expanse of services that they can render.

We offer the following suggestions:

Current State	Current Proposal	Proposed Amendment
38-404 Athletic Trainer, defined		
<p>Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 38-408. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 38-408 with a referral from a licensed physician for athletic training</p>	<p>Athletic Trainer means a health care professional who is licensed to practice athletic training under the act and who under guidelines established with a licensed physician performs the functions outlined in section 38-405. When athletic training is provided in a hospital outpatient department or clinic, or an outpatient-based medical facility or clinic, the athletic trainer will perform the functions described in section 38-405 with a referral from a licensed physician, osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, dentist, or chiropractor.</p>	<p>Athletic Trainer means a health care professional who is licensed to practice athletic training under the act and who under guidelines established with a licensed physician performs the functions outlined in section 38-405 when providing care to an athlete in a sanctioned sport. When athletic training is provided in a hospital outpatient department or clinic, or an outpatient-based medical facility or clinic, the athletic trainer will perform the functions described in section 38-405 with general supervision and frequent communication of a physician along and with a referral from a licensed physician, osteopathic physician, podiatrist, advanced practice registered nurse, physician assistant, dentist, or chiropractor. The referral must state the diagnosis and specific instructions or protocol for services to be provided.</p> <p>General supervision defined: Means the service athletic training (38-405) is furnished under the physician's overall direction and control, but the physician's presence is not required during the performance of this service procedure.</p>

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In the past, ~~if the physician when~~ an athletic trainer provided care to athletes on a ~~sport~~ team, the physician ~~provided gave~~ guidelines (i.e. how to act when ~~certain an acute things injury or illness occurshappen~~ during practice and ~~game situationscompetition~~). These individuals ~~can be consideredare~~ healthy ~~and fit based on pre-season medical clearance, as is the case with high school student athletes per the Nebraska School Activities Association.² We can assume these participants will likely and~~ have an expected response to an illness or injury. In a clinic ~~whereby with~~ people ~~who have~~inge multiple chronic conditions ~~are~~ being treated, the “well-

defined" response to injury or illness usually does not occur. ~~Therefore, and where~~ more frequent communication and increased supervision will be needed.

Current State 38-405 Athletic Training, Defined	Current Proposal	Proposed amendment
<p>▲ Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 38-408.</p>	<p>▲ Athletic training or practice of athletic training means providing the following regarding injuries or common illnesses and conditions;</p> <ul style="list-style-type: none"> · Prevention and wellness promotion; · Examination, assessment and impression; <p>○ Impression defined: A summation of information and/or an opinion formed, which is the outcome of the examination and assessment process.</p> <ul style="list-style-type: none"> · Immediate and emergency care including the administration of emergency drugs. Drugs include those as defined in 38-2819 except for controlled substances; · Therapeutic intervention/rehabilitation s, common illnesses and conditions in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function; · Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity <p>▲ The scope of practice of athletic trainers does not include the use of joint manipulation, grade V mobilization/manipulation, thrust joint manipulation, high velocity/low amplitude thrust, nor any other procedure intended to result in joint cavitation. Joint manipulation commences where grades one through four mobilization ends.</p> <p>▲ Health care administration, risk management and professional responsibility;</p>	<p>Athletic training or practice of athletic training means providing the following regarding injuries or common illnesses and conditions;</p> <ul style="list-style-type: none"> · Prevention and wellness promotion; · Examination, assessment and impression; <p>▲ Impression defined: A summation of information and/or an opinion formed, which is the outcome of the examination and assessment process that is documented, and a plan of care established, reviewed by physician and signed.</p> <p>▲ For each patient under his or her care, the athletic trainer shall ensure medical documentation is complete, accurate, timely, legible, and consistent with the NATA Best Practice Guidelines for Athletic Training Documentation³. These shall also include:</p> <ul style="list-style-type: none"> a) Be responsible for all aspects of athletic training services provided to the patient and assume liability. b)a) Provide and document legibly the an initial examination, and assessment, and impression and documentation of the examination. b) Provide periodic re-examination with legible and documentation of the re-examination, assessment, and impression. c) Establish a plan of care following either the initial

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	<p>Pursuant to 38-2025 (18) the Practice of Medicine and Surgery, no athletic trainer shall hold themselves out to be a physician, surgeon, or qualified to prescribe medications</p>	<p>examination or re-examination with short- and long-term goals that is reviewed and signed by referring physician or signed by supervising physician.</p> <p>e)d) Be responsible for accurate and legible documentation of each follow up visit and billing for athletic training services provided.</p> <p>e)e) Provide legible documentation upon for discharge, including patient's response to therapeutic athletic training intervention at the time of discharge.</p> <ul style="list-style-type: none"> • Be responsible for accurate documentation and billing for services provided. <p>· Therapeutic intervention/rehabilitation of injuries, common illnesses and conditions in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function;</p> <p>· Therapeutic modalities including but not be limited to, physical modalities, mechanical modalities, water, heat, light, sound, cold, and electricity</p> <p>The scope of practice of athletic trainers does not include the use of joint manipulation, grade V mobilization/manipulation, thrust joint manipulation, high velocity/low amplitude thrust, nor any other procedure intended to result in joint cavitation. Joint manipulation commences where grades one through four mobilization ends.</p>
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		<ul style="list-style-type: none"> · Health care administration, risk management and professional responsibility; · Be responsible for all aspects of athletic training services provided to the patient and assume liability. <p>Pursuant to 38-2025 (18) the Practice of Medicine and Surgery, no athletic trainer shall hold themselves out to be a physician, surgeon, or qualified to prescribe medications</p>
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Discussion: When providing care in a health care setting, it is essential that those services are documented accurately and at every visit to monitor effectiveness, [establish](#) medical necessity, [for receiving these services](#), and [to determine a need for plan of care changes](#). [In addition to this](#), [Providing care under the general supervision of a physician requires that responsibilities of the supervisor be clearly defined.](#)

We have not addressed the scope of practice for the athletic trainer, ~~and~~ [This will need to be defined more than simply listing of interventions that they provide in section 348-405. On the The NATA website they defines the “Contemporary Expertise-Practice” of the athletic trainer as:](#)¹

“Knowledge and training of current concepts and best practices in routine areas of athletic training, which can include prevention and wellness, urgent and emergent care, primary care, orthopedics, rehabilitation, behavioral health, pediatrics, and performance enhancement. Contemporary expertise is achieved through mechanisms such as advanced education, clinical practice experiences, clinical research, other forms of scholarship, and continuing education. It may include specialization in one or more of the identified areas of athletic training practice. An individual’s role within the athletic training program should be directly related to the person’s contemporary expertise” ~~–NATA website~~

The above is a long list of [practice areas](#), ~~however, but these are not all areas potentially encountered in a health care setting are~~ adequately addressed in the [current practice act revisions submitted by NSATA. These include oncology, geriatrics, and cardiovascular and pulmonary care.](#) We believe this is an area that needs to be more defined. [In his public testimony, of Nathan Jacobson, MD -Dr-](#) story talked about using the athletic trainer as a “physician extender.” [He states:](#)⁴

[“...athletic trainers performing an initial intake of a new patient in the clinical setting can provide a much more in-depth musculoskeletal history of present illness as they know the musculoskeletal system better than a medical assistant or nurse \(RN or LPN\). This allows them to focus in on the pathology much quicker and provide me more directed information upon entering the exam room. Utilizing their musculoskeletal knowledge and standing orders for ordering appropriate x-rays for their supervising physician should be one of the many privileges extended to athletic trainers in Nebraska.”](#)

~~Have we~~ [We have not addressed the responsibilities of that a physician when an exam, assessment, and impression assessment is provided by an athletic trainer prior to the orthopedic surgeon physician examining seeing the patient. Additionally, at no time in the current proposal has any attention been directed to ordering images as stated by Dr. Jacobson. What has been mentioned by Dr. Jacobson in his testimony is:](#)⁴

"There is no question that having someone with an athletic trainer's education level would increase my productivity in the office as well as facilitate improved patient care."

These comments blatantly contradict the following reasons outlined in the 2019 Uniform Credentialing Act 71-6221 (3a and 3b)⁵ for changing a regulated health profession scope of practice. These state:

- 71-6221 (3a)-The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.
- 71-6221 (3b)-Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

This testimony demonstrates an inadequacy in education programs, not inadequate public health, safety, and welfare. Dr. Jacobson's comment "Musculoskeletal training is a known weakness of medical education programs | training in the United States, and athletic trainers could play a support role in bolstering this skill set" seemingly validates this. Finally, Dr. Jacobson points to financial incentive as a benefit versus the benefit of public health, welfare, and safety.

? In the giving of Regarding emergency drugs, if they an athletic trainer will be seeing managing patients outside of the athletic setting with defined guidelines of the supervising physician, is the administering of drugs adequately defined for guidance when writing new rules and regulations?

There is a desire to expand As you can see the list of "areas" that the athletic trainer can practice. Yet, does the current revisions adequately address the potential areas that an athletic trainer can practice in order to protect the citizens of Nebraska? The Nebraska Chapter of the APTA does not believe it does.

The above are suggestions/recommendations, and the The Nebraska Chapter of the APTA would be happy to assist the athletic trainers in formulating additional revisions that would adequately address physician supervision, referral responsibilities, scope of practice, and documentation of such services.

We look forward to continued discussion.

Sincerely yours,



Grace Knott PT
Nebraska Chapter-APTA President
402-981-0086

4. —

2. Nebraska School Activities Association Constitution and Bylaws. (2019). Retrieved from <https://nsaa-static.s3.amazonaws.com/textfile/yb/c&b.pdf>.

3. National Athletic Trainers' Association Best Practice Guidelines for Athletic Training Documentation. (2017). <https://www.nata.org/sites/default/files/best-practice-guidelines-for-athletic-training-documentation.pdf>

4. Jacobson, NA. (2020). Public testimony letter

5. State of Nebraska Statutes Relating to Uniform Credentialing Act and Health Care Quality Improvement Act, Nebraska Regulation of Health Professions Act, and Verification of Lawful Presence. (2019)

- **Applicant group responses to the aforementioned NE-APTA and NOTA comments:**

Dear Technical Review Committee,

The Nebraska State Athletic Trainers' Association (NSATA) is providing this letter in response to the Nebraska Occupational Therapy Association's (NOTA) letter submitted to the Athletic Trainer Technical Review Committee on October 7, 2020. The NSATA appreciates the opportunity to address several of the concerns raised by the NOTA. Please see our responses below.

The NOTA cited a lack of evidence to support the inclusion of the language "vocational." The NSATA contends that the NOTA's recommendation to use the term "tactical athletic activities" and removing "or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina" limits an athletic trainer to rendering care at a level that is less than the full capacity of an athletic trainer's education and training. That is not the intent of the NSATA in seeking a credentialing review. Athletic trainers have experienced three advancements of educational standards since the last credentialing review completed in 1998. These standards have included didactic and clinical course work which has prepared entry level athletic trainers to work with populations who present with co-morbidities and a range of populations from pediatric to geriatric. Domain 2 of the Practice Analysis, as well as Standard 50 and 71 in the CAATE 2020 Standards, demonstrate this advancement best. The NSATA has worked to ensure safety measures are in place when working with members of the public including by doing so with a referral from a licensed health care provider as outlined in 38-404. This ensures the patient and the treating health care provider have choice regarding the qualified health care provider they refer to.

The NSATA has been committed to listening to concerns and recommendations from other interest groups since it started preparing for the credentialing review process in October of 2019. The NSATA worked to use "vocational" at the recommendation of the Nebraska Chapter of the American Physical Therapy Association's letter submitted to the Technical Review Committee early in the credentialing review process. The NSATA also tried to steer away from "occupational" as a professional courtesy to occupational therapists in Nebraska. Question seven of the additional questions section of the credentialing review application asks for "experience of other jurisdictions in regulating the practitioners affected by the proposal." The NSATA identified states with similar language to that of the amended proposal and disciplinary data citing no increase in discipline as a result of the scope of practice changes implemented in those states. Virginia, West Virginia, and Oklahoma all have language in their respective athletic training practice acts allowing them to treat occupational injuries. In a survey sent by the Board of Certification for the Athletic Trainer to state regulatory boards, West Virginia's athletic training regulatory board cited no increase in discipline as a result of a change in scope of practice.

The NOTA also cited the NSATA not using the term "athlete" in the proposed language. The term "athletic" was retained within a list of activities that the NSATA was asked to

include to help clarify things which patients athletic trainers are seeing may be engaged in, and limited by, the conditions and illnesses as defined in the proposed language. To provide clarification in this area the NSATA included “injuries or common illnesses and conditions related to, or limits participation in, exercise, athletic, recreational, vocational, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina.” The term “athletic” focuses on the condition being treated, not the person (athlete) as the NOTA proposes.

The NOTA also cited that there is no evidence to support that the populations athletic trainers are looking to treat are underserved. The NSATA contends that the purpose of the amended proposal is not to treat a patient population that is underserved, just use the athletic trainer’s skills for the patients they serve. The scope of practice changes would allow for athletic trainers to practice to the fullest of their scope, affording them the opportunity to provide a higher quality of care by providing services they are currently unable to render. The amended proposal would also enable athletic trainers to treat a broader range of injuries, illnesses and common conditions, enabling patients to have a choice regarding the health care professionals to provide their care.

The NSATA appreciates the continued discussion regarding the amended proposal submitted to the Technical Review Committee. The NSATA has listened to comments and recommendations from the Technical Review Committee, interest groups, and members both prior to, and throughout the credentialing review process. The amended proposal reflects those efforts and iterations of the proposal are documented on the Credentialing Review website. The NSATA stands by its’ decision to move forward with the amended proposal in its’ current wording.

Sincerely,



Michael Roberts

407 Workgroup Chair

Nebraska State Athletic Trainers’ Association

All information used to create Part Four of this report can be found in the credentialing review program link at

<http://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Five: Final Discussion and Formulation of Recommendations

Final General Discussion on the Issues Under Review:

Grace Knott, PT, asked the applicants who would an athletic trainer report to under the terms of the proposal? Ms. Knott went on to state that this question is vital in determining the safety of the proposed new athletic trainer scope of practice under review, and that until such time as this question is addressed her group would continue to oppose the proposal. Dr. Discoe commented that he also wants to see guidelines pertinent to how oversight would be provided in service contexts outside of athletic facilities. Dr. Discoe added that he sees no reason why the applicant group would not be willing to provide this information as the review of their proposal proceeds toward the legislative phase of the review process, and expressed confidence that they would eventually provide these kinds of details when it

becomes time to draft legislation to carry the proposal forward. An applicant representative responded by stating that the applicants would be working towards defining these kinds of details as the review process on the proposal continues forward into the legislative phase and that they would be glad to hold discussions with NPTA and NOTA representatives on these matters throughout the remainder of the review process.

Discussion on the Statutory Criteria as They Pertain to the Proposal: These criteria are as follows:

Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

Dr. Raska commented that in his judgment the proposal addresses a real service need in Nebraska especially in remote rural areas of our state.
Alice Kindschuh commented that the proposal satisfies criterion one.
Ruth Lucas commented that the proposal satisfies criterion one.

Criterion two: Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

Dr. Raska commented that the proposal satisfies criterion two.
Alice Kindschuh commented that the proposal satisfies criterion two.
Ruth Lucas commented that the proposal satisfies criterion two.

Criterion three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.

Ruth Lucas commented that the proposal satisfies criterion three.
Alice Kindschuh commented that the proposal satisfies criterion three.
Dr. Raska commented that the proposal satisfies criterion three.
Lisa Pfeil commented that the proposal satisfies criterion three.

Criterion four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.

Dr. Raska commented that the proposal satisfies criterion four.
Alice Kindschuh commented that the proposal satisfies criterion four.
Ruth Lucas commented that the proposal satisfies criterion four.

Criterion five: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.

Ruth Lucas commented that the proposal satisfies criterion five.
Dr. Discoe asked the applicants to comment on this criterion. One applicant stated that Nebraska athletic trainers take fifty-hours of CE every two years to satisfy statutory requirements.

Criterion six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

Dr. Discoe asked the applicants to comment on this criterion. One applicant stated that athletic trainers are included under the Uniform Licensure Law and all of its disciplinary guidelines and that this provides reasonable assurance of competency. He added that, in addition, there is an athletic trainer Board of Certification that addresses these kinds of issues, as well.

Formulation of Recommendations on the Athletic Trainers Proposal

The committee members took a roll call vote to formulate their recommendations on the Proposal as follows:

Voting to recommend approval of the proposal were Discoe, Howorth, Kindschuh, Lucas, Pfeil, and Raska. There were no nay votes. Chairperson Jackson abstained from voting.

Grace Knott, PT, reiterated her concerns about the need for more clarification regarding oversight of athletic trainer services delivered outside of the context of athletic facilities or institutions. Dr. Discoe expressed concerns about the need for documentation by the applicant group of how oversight would be provided for these kinds of non-facility-based services, adding that his support for the proposal is conditional upon this outstanding question being satisfactorily resolved. Dr. Discoe advised the applicants to work closely with physicians and physical therapists to address this matter as the review process advances into its legislative phase.

Dr. Moffatt, NMA representative, and Dr. Raska, DPM, expressed their support of Dr. Discoe's comments about the need for the documentation of oversight of the athletic trainer services in question. Dr. Raska added that the kind of documentation utilized by "EMR" information-sharing procedures is vital for the success of the proposal in the field, and advised the applicants to adopt this approach to this resolve this outstanding question. One applicant representative responded that athletic trainers already utilize these kinds of procedures and that it would be easy to apply them to address this issue as well.