

# Legal Issues Pertaining to Athletic Trainers

Lakewood Orthopaedics & Sports Medicine

Advanced Education Seminar

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# Agenda

- Should You Form a Legal Entity?
- Laws Affecting Athletic Trainers
  - State Law
  - Fraud & Abuse
- Discussion



# Legal Entity?

*Should you form an entity?*

Liability Protection: Generally, providing services through entity gives some measure of protection, but an entity may not always protect you.

- Need to Observe Corporate Formalities
- Need to Conduct Services Through Entity

Entity selection: LLC vs. PLLC, Inc., LP, GP

Liability: professional/general liability insurance



# Laws Affecting Athletic Trainers

## *State Law*

- "Athletic training" means the form of health care that includes the practice of preventing, recognizing, assessing, managing, treating, disposing of, and reconditioning athletic injuries **under the direction of a physician licensed in this state or another qualified, licensed health professional** who is authorized to refer for health care services within the scope of the person's license.
- An athletic trainer license does not authorize the practice of medicine by a person not licensed by the Texas Medical Board.



# Standards of Conduct

- AT must work under direction of a licensed physician or another qualified and licensed health professional.
- AT shall not misrepresent qualifications or credentials.
- AT shall not promote or endorse products in a false or misleading manner.
- AT shall comply with Texas Controlled Substances Act and Texas Dangerous Drug Act and implementing regulations.



# Standards of Conduct

- AT shall not aid or abet the practice of an unlicensed person.
- AT shall not provide health care services which are not within the definition of athletic training.
- AT shall not receive or give a commission or rebate or any other form of remuneration for the referral of athletes for professional services.
- AT shall provide athletic training services without discrimination.



# Standards of Conduct

- AT shall not violate any state or federal privacy laws.
- AT shall not offer services to a person concurrently receiving the same or similar professional services from another individual except with the knowledge of that individual.
- AT shall not engage in sexual contact or sexually exploitive behavior.
- Unreasonable or medically unnecessary billing is prohibited.
- AT shall display license certificate in primary office.



# Standards of Conduct

- AT shall not use false, misleading or deceptive advertising, including:
  - Material misrepresentations of fact or omissions;
  - Representations likely to create unjustified expectations of results;
  - Comparisons of to other health care professional's services without factual substantiation;
  - Testimonials;
  - Advertisements or representations that deductibles or copayments may be waived or are not applicable if such deductibles or copayments are required.
  - Representations designed to take advantage of fears or emotions.



# Laws Affecting Athletic Trainers

## *State Law*

Governing Body: Advisory Board of Athletic Trainers (Department of State Health Services)

**GROUND FOR DENIAL OF LICENSE OR DISCIPLINARY ACTION.** (a) The Board may refuse to issue a license...or suspend, revoke, or refuse to renew a person's license if the person:

1. has been convicted of a misdemeanor involving moral turpitude or a felony;
2. obtained the license by fraud or deceit;
3. violated or conspired to violate a law or a rule; or
4. provided services outside the scope of practice of athletic training.



# Laws Affecting Athletic Trainers

## *Federal and State Law*

- **Prohibition**: It is a FELONY to knowingly and willfully offer, pay, solicit, or receive any "remuneration" in order to induce referrals of items or services reimbursable by any Federal or State health care programs.
  - Federal statute: applies to services for which payment may be made in whole or in part under a Federal health care program.
  - Texas statute: mirrors federal statute, but applies to all payors.
  - Other States – Each State has different laws.



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# Laws Affecting Athletic Trainers

*Federal and State Law*

- **Penalties**
  - **Criminal**
    - Fine of up to \$25,000 per violation and/or
    - Imprisonment for up to 5 years
  - **Civil**
    - Civil fines in the amount of \$50,000 per violation
    - Plus damages of not more than 3 times the total amount of remuneration offered, paid, solicited or received
- **Exclusion From Federal/State Programs**
- **False Claim Actions**



# Laws Affecting Athletic Trainers

## *Federal and State Law*

- Intent-Based Statute
  - If even just **One Purpose** is to induce referrals = Anti-Kickback Statute violation
  - Intent may be inferred from circumstances surrounding the arrangement
- Definition of "**Remuneration** "
  - Any type of cash
  - Provision of free items or services
  - Conferring a benefit
- Generally, no *de minimis* exception

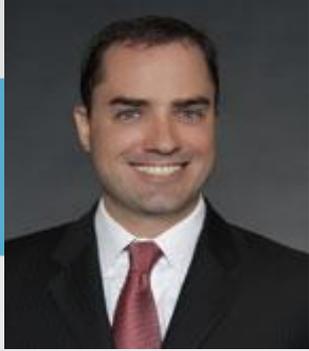
**REMUNERATION = ALMOST ANYTHING!**

***e.g., return on investment, compensation and cost savings***

# Discussion

- Questions?





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Josh and Ashley provide counsel to health care providers on complex operational, transactional and compliance issues. They have experience advising hospitals, ambulatory surgery centers, independent diagnostic testing facilities, laboratories, pharmacies, physicians and other health care providers on various issues, including matters implicating the Federal Anti-Kickback Statute, the Physician Self-Referral ("Stark") Statute, the Texas Illegal Remuneration Statute, The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the False Claims Act, and the Emergency Medical Treatment and Active Labor Act ("EMTALA"), among many others. Josh and Ashley also advise clients with respect to reimbursement issues and payor audits. Their transactional experience includes drafting and negotiating a variety of health care contracts, including professional services agreements, physician employment agreements, asset purchase agreements, management and co-management agreements, business associate agreements, operating agreements, and equipment and space leases, among others. Josh and Ashley also assist clients in the formation and syndication of hospitals, ASCs, joint ventures, pharmacies, and laboratories.

Josh and Ashley are both Board Certified in Health Law by the Texas Board of Legal Specialization.

