

Date of Hearing: May 14, 2020

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Kansen Chu, Chair

AB 2410 (Cunningham) – As Introduced February 18, 2020

SUBJECT: Athletic trainers.

SUMMARY: Establishes title protection for athletic trainers, as specified. Specifically, **this bill:**

- 1) Declares that a person shall not hold themselves out to be an athletic trainer, use the title “athletic trainer,” “certified athletic trainer,” “licensed athletic trainer,” “registered athletic trainer,” or any other term such as “AT,” “ATC,” “LAT,” or “CAT” to imply or suggest that the person is an athletic trainer, unless the person meets the following requirements:
 - a) The person has done either of the following:
 - i) Graduated from a college or university after completing an athletic training education program accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors.
 - ii) Completed eligibility requirements for certification by the Board of Certification, Inc., or its predecessors or successors, or from another certifying entity with comparable standards for certifying athletic trainers.
 - b) The person is certified by the Board of Certification, Inc., or its predecessors or successors, or by another certifying entity with comparable standards for certifying athletic trainers.
- 2) Provides that it is an unfair business practice, as defined, to violate the requirements of comment (1) above.
- 3) Allows a person who has worked as an athletic trainer in California for a period of 20 consecutive years prior to January 1, 2021, and who is not otherwise eligible, to use the title “athletic trainer,” as provided.
- 4) States the act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect.

FISCAL EFFECT: This measure has been keyed nonfiscal by Legislative Counsel.

COMMENTS:

- 1) *Author’s statement and support.* According to the author, “Athletic Trainers provide critical health services for a wide array of industries including both professional and student athletes. It is imperative schools, teams and organizations have correct information on who is applying to work with these groups of athletes and individuals. There have been reported instances

where individuals are being employed as Athletic Trainers without having the proper certification.

AB 2410 seeks to alleviate this problem by giving title protection to individuals who have actually completed the necessary schooling and certification exams to be an Athletic Trainer. This information and legal protection will allow future employers to know that they are only hiring people who can skillfully and correctly administer the duties of an Athletic Trainer. It will protect our professional and student athletes.”

The California Orthopedic Association add in their support of Assembly Bill 2410, “Orthopedic surgeons and other medical professionals may rely on Athletic Trainers to be the front lines to injury response, particularly in high school sports. In addition, “Some of our members work alongside Athletic Trainers in their practices. Athletic Trainers provide crucial support and patient care to orthopedic patients, particularly in the areas of sports medicine. Further professionalization of Athletic Trainers is good for patients.”

Finally, the California Physical Therapy Association (CPTA) writes in support, “CPTA has had numerous concerns with other bills presented in the past on this subject, specifically those seeking a full-blown licensing scheme with an overly broad scope of practice, which we and others have consistently viewed as unnecessary and overly broad. The most oft-repeated argument in favor of a bill over the past 20 years is that anyone in California can call themselves an ‘Athletic Trainer’ or ‘Certified Athletic Trainer’ without having relevant or appropriate credentials. AB 2410 addresses this issue cleanly and directly, recognizing the national certification standard, which is appropriate, as it has long been considered the ‘gold standard’ for Athletic Trainers.”

- 2) *Background.* This bill would establish a title protection for ATs who have been certified by the BOC, meaning that individuals who are not certified or exempted would be prohibited from holding themselves out as an AT.
 - a) *The Role of Title Protection.* This bill would provide BOC-certified ATs with title protection, while those non-certified individuals who advertise the use of the name AT would risk legal action—except for those individuals who meet the 20-year exemption.
 - b) *Board of Certification, Inc.* The Commission on Accreditation of Athletic Training Education (CAATE) is the national agency responsible for accrediting education institutions for athletic training. Currently, in California, over a dozen universities provide bachelor degree athletic training programs certified by CAATE. The BOC provides the certification examination, which is based on the CAATE educational principles, and the BOC is the only entity which provides athletic training certification and would be the sole provider of the certification examination in California. Certification is voluntary and this bill would not require certification in California nor would non-certified individuals be subject to regulatory discipline for practicing the profession.
 - c) *Title Act vs. Practice Act aka License.* There is an important distinction between regulations which require licensure and those which protect a professional title. Statutes regulating professions in California generally fall into two categories: a "practice act" or a "title act." A “practice act” regulates the duties, responsibilities and scope of practice that

a licensee can perform upon meeting specific educational, experiential or training requirements. A "title act" simply regulates the use of the title an individual may use in practice. In order to be permitted to use a title, a state may require proof that an individual has a certain level of experience or education relevant to the particular title being regulated. Title protection is generally intended to be a means of market differentiation whereas a "practice act" would literally prohibit individuals from engaging in the practice regardless of how it is described. This bill would allow individuals to continue to practice athletic training in California, but they would not be permitted to call themselves "ATs" or use the title "AT" or "CAT."

- 3) *California is the only state in our United States not regulating Athletic Trainers.* As this committee was informed and the analysis reflected last year in consideration of AB 1592 (Bonta), a measure which would have provided an alternate form of regulation for ATs. "Athletic trainers are health care professionals who are often charged with managing serious medical conditions such as concussions, heat illness, sudden cardiac arrest as well as a myriad of musculoskeletal issues like dislocations and fractures. Athletic trainers are required to complete an accredited athletic training education program at a college or university that culminates in at least a bachelor's degree in athletic training and achieve national athletic training certification through the Board of Certification, Inc...California is the only state that does not regulate the profession of athletic training. Currently anyone can call themselves an athletic trainer, regardless of whether they have any education or are nationally certified. A recent CIF survey of athletic directors with an approximately 90% response rate, and other verification indicate that there are at least 150 high schools currently employing an unqualified, non-certified individual who is practicing as an athletic trainer without the requisite education and training. This means hundreds of thousands of young athletes are unknowingly exposed to unqualified individuals purporting to be a health care professional and are managing injuries and conditions and giving medical advice to vulnerable athletes and their parents.

In California, because there is no entity that regulates athletic trainers, there is no accurate, systemic way for the public to report evidence of harm against athletic trainers or those posing as athletic trainers, and have those reports investigated or even tracked. There is mostly only anecdotal evidence. In the last two years, the CATA has fielded 80 complaints broken down as follows:

- Non-BOC certified person employed/volunteering as an Athletic Trainer – 50
- Unsupervised athletic training students – 15
- Harm to Patient – 8
- Licensed health-care professional claiming to be an Athletic Trainer – 6
- Other - (violation of patient privacy via social media) – 1

The Committee Analysis also noted that "Currently athletic trainers practice in a legal grey area. Employers of athletic trainers in sectors such as education, healthcare, professional sports and industry are concerned that there is no state sanctioned scope of practice to delineate what athletic trainers can and cannot do. In health care settings, athletic trainers are often the only professionals these employers hire that aren't regulated. This creates a lack of uncertainty that increases the employers' risk of liability. Athletic trainers in some settings, especially in collegiate and professional sports and performing arts, are required to travel outside of the state as part of their job. In an increasing number of states, when an athletic

trainer travels with their team or group and is performing his/her duties, they are practicing outside of that state's law solely because they aren't regulated. This puts employers in the untenable situation of having to choose between continuing to use their athletic trainer and increasing their liability or having to contract an athletic trainer who is regulated in that state to provide care but is unfamiliar with their athletes or performers and management and is unable to provide any continuum of care.”

- 4) *Recognition of the profession of Athletic Trainer by other States.* Athletic trainers have some form of regulatory recognition in every state but California. 45 states (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming) license athletic trainers, requiring that individuals graduate from a bachelor's degree program accredited by Commission on Accreditation of Athletic Training Education (CAATE), pass the comprehensive test administered by BOC, and meet ongoing educational requirements in order to stay licensed. These states provide that it is illegal to practice as an athletic trainer without obtaining a license. Only 2 states, Oregon and Hawaii require registration whereby an individual submits information (name, address, qualifications) in order to practice as an athletic trainer. Two states (New York and South Carolina) have a certification/title protection model under which an individual meets predetermined standards to be able to use the title of athletic trainer and where uncertified individuals can perform athletic trainer duties but cannot use the title of AT.
- 5) *Sunrise process and further explanation of athletic training.* As noted above and below, the regulation of athletic trainers has come before this committee and the Legislature numerous times. The following is taken from the excellent Senate Business and Professions analysis of AB 3110 (Mullin) of 2018, which also aspired to regulate athletic trainers.

The Legislature uses a “Sunrise Model” for the purpose of assessing requests for new or increased occupational regulation, including the creation of any new licensing scheme or licensing entity within the DCA. Pursuant to the Government Code Sections 91488 et. seq. provisions and the Rules of this Committee, the CATA submitted a completed “Sunrise Regulatory Request Questionnaire” (Sunrise Questionnaire) in November, 2017 in support of its proposal for licensure (at the time, a bill proposing licensure was moving through the Legislative process).

According to information contained in the sunrise questionnaire, athletic training is listed by the American Medical Association, Health Resources Services Administration, the Department of Health and Human Services, and Centers for Medicare and Medicaid Services as an allied health profession. Athletic trainers work in collaboration with a physician and their education is predicated upon a formalized relationship with a physician, working under established guidelines. According to the sunrise questionnaire, athletic trainers evaluate injuries and determine a patient's disposition, respond to emergencies and make “split second decisions” regarding the management of an injury as well as making decisions regarding the course of rehabilitation. Athletic trainers also make “immediate decisions regarding serious conditions such as concussion, spinal cord injury, heat illness and sudden cardiac arrest

without the intervention or advice of other health care professionals” in situations where an incorrect decision could lead to a catastrophic or fatal outcome.

An individual can become an athletic trainer by graduating with a minimum of a bachelor’s degree from an accredited athletic training education program and by passing a national certification examination offered by Board of Certification, Inc. (BOC). According to the sunrise questionnaire, 70 percent of athletic trainers practicing today hold a master’s degree or higher. Athletic trainers, like other health care professionals, take science based courses in anatomy, physiology, chemistry and physics and must understand all systems of the body and their normal and pathological functions, including biochemical functions. Athletic training education also includes didactic instruction and clinical training in risk management and injury prevention, orthopedic clinical assessment and diagnosis, medical conditions and disabilities, acute care of injuries and illness, therapeutic modalities and conditioning and rehabilitative exercise, psychosocial intervention and referral, nutritional aspects of injuries and illness, health care administration and professional development.

The questionnaire highlights that according to the U.S. Department of Labor, athletic trainers are classified as “learned professionals.” In the Code of Regulations under FLSA Section 213 exemption provision, athletic trainers have advanced and specialized knowledge through academic instruction which puts the athletic training profession in the same classification as professions of law, medicine, theology, accounting, actuarial computation, engineering, and architecture, most of which require state licensure and codes of professional ethics to practice. Athletic trainers are assigned National Provider Identifier (NPI) numbers like other health care professionals. According to the sunrise questionnaire, Department of Labor’s classification of certified athletic trainers as learned professionals “is significant because it affirms that athletic trainers have ‘advanced knowledge . . . in a field of science or learning . . . customarily acquired by prolonged course of specialized knowledge through academic instruction’, as outlined in 29 C.F.R. § 541.301(a)–(d).

According to the sunrise questionnaire, currently there are over 3,300 BOC-certified individuals who would qualify for the practices and registration outlined in this bill, who are using the titles this bill would protect. The questionnaire also highlights that the United States Department of Labor, Bureau of Labor Statistics states in the 2016-17 edition of the *Occupational Outlook Handbook* “Employment of athletic trainers is projected to grow 21 percent from 2014 to 2024, much faster than the average for all occupations. As people become more aware of sports-related injuries at a young age, demand for athletic trainers is expected to increase.” According to the questionnaire, citing data provided by the California Interscholastic Federation, over 151 such individuals are currently practicing and/or holding themselves out to be an athletic trainer in secondary schools without the requisite education and qualifications. Included among the individuals who purport to practice athletic training in California secondary schools are administrators, custodians, teachers, coaches, etc.

According to the BOC, approximately 60 percent of certified athletic trainers in California work with athletes in an educational or specific professional setting. Over a third of clinically practicing athletic trainers in California (35 percent) work with in a non-traditional setting with physically active people or “non-athletes.” This is consistent with the national average of over 36 percent of athletic trainers who work with “non-athletes.”

Athletic trainers serve a wide variety of consumers who have sustained injuries or have other medical conditions exacerbated by participation in physical activity. This includes individuals across the lifespan, from young adolescent athletes to adults injured on the job to geriatric individuals post joint replacement procedures. Athletic trainers are typically employed by organizations such as professional sports teams, colleges and universities, high schools, out-patient rehabilitation clinics, hospitals, industry/ corporations, performing arts groups, physicians, the military, and health clubs. In the course of their employment, athletic trainers serve individual consumers associated with these organizations and/or employers.

Clients typically access athletic training practitioners directly. For example, an injured athlete, soldier, police officer or assembly line worker will be directed by a supervisor or “self-refer” to the institution’s athletic trainer for services such as injury prevention, evaluation, treatment, or rehabilitation. In cases of acute injury, the athletic trainer responds to the patient when notified of the injury. These are not referrals in the traditional sense, as no other health care professional is involved. This differs from “direct access” as athletic trainers are required to work under the direction of a physician and will collaborate with them on patient care.

Other health care practitioners may refer patients to athletic trainers for services. Physicians and physical therapists refer their patients to athletic trainers for rehabilitation programs and/or return to activity progression. Athletic training is not a stand-alone profession as certified athletic trainers work under the direction of and in collaboration with physicians. The sunrise questionnaire notes that athletic trainers are responsible for making a myriad of medical decisions, including life or death decisions regarding acute injuries and conditions in the course of their duties. As they are often the only health care provider present in the crucial minutes that will make the difference between survival or a tragic outcome, they must use sound clinical decision making skills and the entirety of their knowledge and training. They also make regular decisions regarding return to activity, referral and treatment. Over the last 2 and a half years, the CATA has received 93 complaints from the public regarding actions by both certified and non-certified individuals practicing athletic training, including, as the questionnaire notes, “harm to the public with patients asking the association to initiate disciplinary action against athletic trainers.”

The sunrise document also highlights the potential harm to young athletes who receive services from “unqualified and non-certified individuals” holding themselves out as athletic trainers. This includes giving medical advice to parents who incorrectly assume that the “athletic trainer” their school has hired is qualified to give such advice. Hundreds of thousands of student athletes come in contact with these individuals and unfortunately, albeit predictably, there are hundreds of documented cases of harm resulting to athletes under the care of these unqualified individuals. According to the questionnaire, citing data from the US Department of Labor Division of Practitioner Data Banks, a voluntary repository of malpractice claims in 2000- 2014 indicated that there were cases of athletic trainers successfully sued for “failure to diagnose” or “failure/delay in hospital admission” that resulted in “significant permanent injury” or “major temporary injury.” The questionnaire notes that in addition to malpractice claims there are documented cases of sexual misconduct by practitioners, including rape, child abuse and inappropriate sexual contact with patients. Information in the sunrise questionnaire from the US Department of Labor Division of Practitioner Data Banks noted 590 reports of sanctions to athletic trainers between 2000 and

2014, including sanctions for incompetent practice/harm, practicing beyond the scope of practice and sexual misconduct.

The BOC has documented cases and reports of athletic trainers practicing incompetently or unethically in California. Since 2014, the BOC has closed close to 1,831 cases nationally, including 178 disciplinary cases against athletic trainers with a California address. The causes of disciplinary action in the California cases range from recertification violations and practicing without a license in other states to sexual misconduct/criminal convictions. Currently there are 9 athletic trainers residing in California who have had their BOC certification suspended, but there is no way the BOC can determine if they are still practicing in California. Of note, the BOC has limited ability to investigate complaints against certified practitioners and no statutory authority to limit practice of offenders. In addition, the BOC has no authority to investigate or discipline non-certified individuals posing as athletic trainers.

As all states that regulate athletic training are mandated to report their disciplinary actions and malpractice settlements, the sunrise questionnaire notes that without a regulatory board in California there is no mechanism for consumers and employers to ensure athlete trainers coming in from other states to practice have not been sanctioned and more importantly there is no mechanism for California consumers to report harm. Cases exist where athletic trainers from other states have had their licenses revoked and came to California because they were able to continue practicing despite disciplinary action they faced.

- 6) *Originally a Double-referral:* Under normal circumstances, should this bill pass out of this committee, it would be re-referred to the Assembly Committee on Business and Professions. Due to the truncated Covid 19 session, this will be the only policy hearing on the Assembly side, but both committees have cooperated to assure all issues have been reviewed.

The Assembly Committee on Business and Professions offers the author an amendment for clarification to California Youth Football Act (Act). AB 1 (Cooper), Chapter 158, Statutes of 2019, established the California Youth Football Act. The Act establishes various minimum safety requirements for youth football organizations that will go into effect January 1, 2021. Among the safety requirements is that a “minimum of one state-licensed emergency medical technician, paramedic, or higher-level licensed medical professional shall be present during all preseason, regular season, and postseason games” for purposes of removing athletes from the field due to injuries (Health and Safety Code sec. 124241(h)).

Because athletic trainers are not currently licensed as defined under the Act, they will be excluded from fulfilling that requirement when the Act goes into effect January 1, 2021. This bill would establish certification and title protection for athletic trainers, but not a license. As a result, the author may wish to amend this bill to include a conforming change to the Act to include athletic trainers who meet the certification requirements under this bill.

HSC 124241. (h) **(1)** A minimum of one state-licensed emergency medical technician, paramedic, or higher-level licensed medical professional shall be present during all preseason, regular season, and postseason games. The emergency medical technician, paramedic, or higher-level licensed medical professional shall have the authority to evaluate and remove any youth tackle football participant from the game

who exhibits an injury, including, but not necessarily limited to, symptoms of a concussion or other head injury.

(2) For purposes of this subdivision, “higher-level licensed medical professional” includes an athletic trainer who meets the requirements under Chapter 2.6 of Division 8 of the Business and Professions Code.

7) *Prior and related legislation.*

- a) AB 1665 (Bonta), of 2019, is a gut and amend in the Senate of a measure which was originally approved by the Assembly as an Assemblymember Chau vehicle to protect children’s digital privacy. The current language is substantially similar to AB 1592 (below), and would enact, until January 1, 2028, the Athletic Training Practice Act for the purpose of licensing persons engaged in the profession of Athletic Trainer. (Status: Currently pending before the Senate Business and Professions Committee)
- b) AB 1592 (Bonta), of 2019, would have enacted, until January 1, 2028, the Athletic Training Practice Act for the purpose of licensing persons engaged in the profession of Athletic Trainer. (Status: Held in Senate Business and Professions Committee)
- c) AB 3110 (Mullin), of 2018, would have established a registration program under a new Athletic Training Board (Board) within the Department of Consumer Affairs (DCA) and prohibited a person from practicing athletic training, as defined, or holding himself or herself out as an athletic trainer, unless they are registered with the Board. (Status: Held in the Senate Appropriations Committee.)
- d) AB 1510 (Dababneh), of 2017, would have established a registration program under a new Athletic Training Board (Board) within the Department of Consumer Affairs (DCA) and prohibited a person from practicing athletic training, as defined, or holding himself or herself out as an athletic trainer, unless they are registered with the Board. (Status: Held in Assembly Business and Professions Committee for procedural reasons.)
- e) AB 161 (Chau) of 2015 would have established certification and training requirements for athletic trainers and prohibit individuals from calling themselves athletic trainers unless they meet those requirements. (Status: The bill was vetoed by Governor Brown.)
- f) AB 1890 (Chau) of 2014 was substantially similar to AB 161. (Status: The bill was vetoed by Governor Brown.)
- g) AB 864 (Skinner) of 2013 would have established the licensure and regulation of athletic trainers through the creation of an Athletic Trainer Licensing Committee under the Physical Therapy Board of California. (Status: The bill was held in the Assembly Committee on Appropriations.)
- h) SB 1273 (Lowenthal) of 2012 was substantially similar to AB 864. (Status: The bill failed passage in Senate Business and Professions Committee.)
- i) AB 374 (Hayashi) of 2011 as introduced would have established the Athletic Trainer Licensing Committee within the Medical Board of California to license and regulate

athletic trainers commencing January 1, 2013, with a sunset date of January 1, 2018. The bill was later amended to provide title protection for athletic trainers. (Status: The bill was later amended to become a bill by Assemblymember Hill that dealt with funeral embalmers and signed by the Governor.)

- j) AB 1647 (Hayashi) of 2010 would have established certification and training requirements for athletic trainers and prohibited individuals from calling themselves athletic trainers unless they meet those requirements. (Status: The bill was vetoed by Governor Schwarzenegger.)
- k) SB 284 (Lowenthal) of 2007 would have enacted the Athletic Trainers Registration Act prohibiting a person from representing himself or herself as a “certified athletic trainer,” unless he or she is registered by an athletic training organization. (Status: The bill was vetoed by Governor Schwarzenegger.)
- l) SB 1397 (Lowenthal) of 2006 would have enacted the Athletic Trainers Certification Act, prohibiting a person from representing him or herself as an athletic trainer unless he or she is certified as an athletic trainer by an athletic training organization, as defined. (Status: The bill was vetoed by Governor Schwarzenegger.)
- m) AB 614 (Lowenthal) of 2003 would have required the DCA to submit a recommendation to the Legislature as to whether the state should license and regulate athletic trainers by January 1, 2006, if the DCA is provided with an occupational analysis of persons providing athletic trainer services by July 1, 2005. (Status: This bill was held in Senate Business and Professions Committee to allow JCBCCP to examine whether athletic trainers should be licensed as part of the "sunrise" process.)
- n) AB 2789 (Lowenthal) of 2002 would have required the Department of Consumer Affairs to review the need for licensing of athletic trainers and undertake an occupational analysis. (Status: This bill was held by the Assembly Committee on Appropriations.)

REGISTERED SUPPORT / OPPOSITION:

Support

California Orthopedic Association
California Physical Therapy Association
Occupational Therapy Association of California

Opposition

There is no opposition on file.

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