

ARIZONA ATHLETIC TRAINERS' ASSOCIATION
EDUCATIONAL STATEMENT RE:
AT PROFESSIONAL LIABILITY INSURANCE COVERAGE

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EXECUTIVE SUMMARY

- All ATs engaged in practice of delivering AT services to patients/athletes, regardless of practice setting, will benefit from individually-owned professional liability insurance.
- Employer-provided liability insurance applies only to actions undertaken by ATs within the scope of their employment, as defined by the employer.
- Employer-provided insurance normally applies only to claims of negligence on the part of the AT.
- Individually-owned liability coverage provides the AT with an extra layer of protection over and above that which is available from employer-provided coverage.
- Individually-owned liability coverage provides the AT with legal and financial protection in additional types of situations, not just claims of negligence.
- Individually-owned liability coverage for employed ATs will cover “moonlighting” activities of the AT, even when the AT is working as an “independent contractor” for an outside entity.
- For most ATs, the annual cost of purchasing individually-owned liability coverage is less than the cost of one hour of attorney’s fees in matters usually covered by such policies.

This author has long advocated the need for practicing athletic trainers to obtain individually-owned professional liability insurance coverage, regardless of their employment setting. Although most ATs are employed by entities which provide them with liability coverage, there are a number of reasons why it is important for ATs to add another layer of liability protection in the form of their own professional liability policy.

LIMITATIONS OF EMPLOYER-PROVIDED COVERAGE

Employer-provided liability coverage applies *only* to professional activities of the AT which fall within the scope of their employment, and to claims of negligence by the AT. If a claim arises as a result of the AT’s involvement in any activity which falls outside that scope of employment *as defined by the employer*, the insurance carrier may refuse to extend liability coverage to the AT related to that claim. Also, claims of misconduct of an AT which do not allege “negligence,” may not be covered by the employer’s policy.

Coverage may be denied by the liability carrier in spite of the fact that the AT services were provided on the premises of the employer, *if* the employer did consider those services to be an aspect of the AT’s employment contract. Examples would be: 1) Private clinics conducted by a school’s coaches on school property and with the consent of the school, but not as an aspect of the school’s athletics program; 2) Activities conducted on school property by outside organizations, e.g. city/county parks and recreation departments, youth sports associations, *or the Arizona Interscholastic Association (AIA)*, which rent school facilities to conduct their own programs and activities; and 3) Providing AT treatment in the employer’s facility (be it AT room in an educational institution, or a sports medicine setting) for a person who does not fall within the employer’s definition or expectation of those whom the AT is authorized to treat.

ADDED PROTECTIONS OF INDIVIDUALLY-OWNED LIABILITY INSURANCE

An important reason for ATs to obtain their own professional liability coverage, arises out of a legal concept which applies to situations in which an employer is held liable on the basis of the

negligent acts of an employee. Under the law in Arizona and most other states, in those instances the employer has the legal right to pursue recovery *from the employee* for any amount the employer is required to pay to the injured person as a result of the employee's negligence. While such claims by employers are uncommon, it is a very real concern for ATs and a situation in which the AT's personally-owned professional liability insurance policy will provide protection.

Individually-owned professional liability insurance also provides protection against claims and situations to which employer-provided liability coverage do not extend. Some examples are: 1) Actions initiated by the AT's state licensing agency; 2) Claims of professional or legal misconduct not involving negligence; 3) Payment for the services of a lawyer to represent the individual AT during any deposition related to the AT's professional duties; and 4) Reimbursement of income lost while attending a hearing or trial related to a covered claim.

AIA REQUIREMENT FOR ATs

The issue of individually-owned professional liability coverage came to the forefront early during the 2014-15 school year when the AIA announced that ATs enlisted as independent contractors of the AIA to cover AIA post-season events, would be required to produce proof of such coverage. The AIA made it clear that it would not "employ" any AT for that purpose, and that all such individuals would receive an IRS 1099 form relating to the compensation paid by the AIA.

ISSUES WITH MERCER INSURANCE POLICY

Many Arizona ATs had individually-owned coverage through Mercer, the NATA-affiliated company. Mercer offers two basic types of policy, one for "Employed Individuals" and the other for "Self-Employed Individuals." The premium for the "employed" policy is less than half the amount for the "self-employed" policy, and is the option of most ATs who purchase the coverage.

Following the AIA announcement AzATA members, including members of the AzATA Board of Directors, contacted Mercer to determine whether their "employed" policy applied when working as "independent contractors" for an outside entity. They received confusing and conflicting information from different Mercer representatives. Some were told that the coverage only applied if the AT is paid as an *employee* of the entity and receives a standard W-2 form for their compensation; others were told that the coverage applied regardless of whether the entity provided a W-2 or a 1099. This author was then directed by the BOD to investigate and clarify the situation with Mercer.

At that time there were clear conflicts in the language of Mercer's advertising literature, its application form, and its "self-employed" liability policy. In order for ATs to be assured of the protection provided by this policy, those conflicts had to be resolved. Working with the Senior Associate at Mercer responsible for the NATA account, we were able to achieve that result. Mercer has now modified its "employed" policy to include specific language clarifying that "moonlighting" coverage applies to work for an outside entity regardless of whether the AT is an employee (receives a W-2) or an independent contractor (receives a 1099) for such entity. This provision appears in new Mercer policies or policy renewals, and applies to any existing policy. Current policy holders can obtain a copy of an "endorsement" containing that language, upon request to Mercer.

RECOMMENDATIONS FOR INDIVIDUALLY-OWNED LIABILITY INSURANCE

This author continues to advocate strongly for ATs involved in the provision of services to patients/athletes, to purchase their own professional liability coverage. In doing so, it is important to follow certain guidelines:

1. Obtain such coverage from a reputable carrier with an established track record of dealing with the AT profession;

2. Verify that the coverage will apply to claims arising either out of the AT's employment or while working as an independent contractor;
3. Verify that the coverage will apply to matters other than claims of AT negligence;
4. Verify that the insurance coverage is "occurrence" rather than "claims-made:"
 - a. "Occurrence" coverage applies to any incident which occurs during the policy period, regardless of when the "claim" is presented. This is important to ATs who deal with minors, because the claim might not be presented for several years.
 - b. "Claims-made" coverage applies only to incidents which occur during the policy period *and* the claim is also presented during the policy period. Thus, while this type of policy may be less expensive, it provides less protection. To protect themselves against claims presented later, ATs much then purchase "tail coverage" on an annual basis, thus increasing the overall cost of protection.

LESS EXPENSIVE THAN HIRING A LAWYER

In terms of appreciating the value of obtaining individually-owned coverage, the out-of-pocket cost to an AT of hiring a qualified and competent lawyer in a matter that would be covered by the insurance policy, would be at least \$200 per hour. Using the Mercer coverage as an example, for those who qualify for "employed" coverage the premium cost would be about the same as one hour of a lawyer's time. Since it would be rare for a lawyer to be able to provide the necessary services in less than three hours of time, even those who need "self-employed" coverage would save money if just one incident arose that was covered by the insurance policy.

NOTE: Some professional liability policies contain language which negates coverage if the AT is practicing outside his/her legal scope of practice, i.e. in violation of the state AT practice act. Additionally, liability insurance coverage applies to claims of negligence and does not protect the AT against claims of patients/athletes for damages due to criminal or intentional misconduct, or against criminal prosecution for such misconduct. Although the policy may provide for a certain amount of attorney's fees to be paid in such instances, it will not cover the full cost of defending against criminal charges, the amount of any fines assessed to punish the AT, or the amount of any damages awarded to an injured patient/athlete in a civil case based upon criminal or intentional misconduct.