MINNESOTA HEALTH-RELATED LICENSING BOARDS

COUNCIL OF HEALTH BOARDS

Review of Legislative Request:
Health Occupation Review

Athletic Trainers
(HF2399/SF2336)

December 2007

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Health Occupation Review

Athletic Trainers Amendments to Minn.Stat. 2006, Sections 148.7802, subd. 3, 4, 5, 9; 148.7803, subd. 1; 148.7806; 148.7808, subd. 4 (HF2399 / SF 2336)

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Review Panel for the Council of Health Boards:

- Robert Butler, Executive Director, Board of Marriage and Family Therapy, Chair
- Stephanie Lunning, Executive Director, Board of Physical Therapy
- Corinne Ellingham, Board of Physical Therapy
- Rob Leach, Executive Director, Board of Medical Practice
- David Thorson, MD, Board of Medical Practice
- Tom Hiendlmayr, Minnesota Department of Health

Referred to the Council of Health Boards by:

Representative Paul Thissen
Health and Human Services Committee, Chair
Health Care and Human Services Finance Division

Staff to the Subcommittee:

Cindy Greenlaw Benton
Health-Related Licensing Boards
Administrative Services Unit

Public meeting dates:

October 9, 2007 (Legislative Subcommittee)
October 23, 2007 (Legislative Subcommittee)
November 13, 2007 (Legislative Subcommittee)
November 26, 2007 (Legislative Subcommittee)
December 5, 2007 (Full Council)

Review Comments:

The subcommittee of the Council of Health Boards was charged with the responsibility of reviewing the legislative proposal amending statutory sections regarding registered athletic trainers in Minnesota. Minnesota Statutes 214.001, Subd. 4, states that the chair of a standing committee in either house of the Legislature may request information from the Council of Health Boards regarding proposals relating to the regulation of health occupations. Minnesota Statute 214.025 states that the health-related licensing boards may establish a Council of Health Boards consisting of representatives of the health-related licensing boards and the Emergency Medical Services Regulatory Board. When reviewing legislation or legislative proposals relating to the regulation of health occupations, the Council shall include the Commissioner of health or a designee.

The panel reviewed the application through a variety of methods, including: discussion at meetings with interested members of the public and the occupation; review of materials submitted by the proponents, including responses to a questionnaire regarding occupational regulation, Athletic Training Educational Competencies; and review of material contained on national athletic trainers website.

Minn.Stat. §§148.7801 to 148.7815 constitute the Minnesota Athletic Trainers Act. Proposed changes include deleting the word "athlete" and substituting it with "patient", and deleting references to "athletic injuries", substituting the term "injuries". Contemplated changes also include changes to recognized approved educational programs, substituting the term "nationally recognized accreditation agency for athletic training programs" for a list of credentialing organizations, limiting accreditation of educational programs to programs approved or accredited by the National Athletic Trainers Association Professional Education Committee. The bill reduces the length of temporary registration as an athletic trainer from one year to six months, and provides for a three-month period of practice without physician delegation and oversight for new trainers. It also would reduce from four to two the maximum number of athletic trainers with temporary registrations who may work under the direction of a single registered athletic trainer.

Current law requires a physician to establish evaluation and treatment protocols to be used by athletic trainers, which are kept on file by athletic trainers. The legislation under consideration would provide for a three-month grace period for new athletic trainers to obtain a physician signed protocol "as long as the primary employment site is monitoring the practice of the athletic trainer." There is no provision in the proposed statutory amendments that addresses who would perform oversight of, and hold legal responsibility for, athletic trainers during the grace period.

The questionnaire responses were reviewed and rated based upon the materials provided with the application, with limited reliance on knowledge of, or inferences about, the professions by the subcommittee. The worksheets contained 60 items in the general topic areas: Description of the Occupation; Safety and Efficacy; Government and Private Sector Recognition; Education and Training; Practice Model & Viability of Profession; and Regulatory Framework. The proposal submitted by the proponent for this legislative change was reviewed according to these 60 items for thoroughness of response and provision of information. The Council has assessed the degree to which the responses to the questions and information provided supported the application for establishing licensure.

The Council reviewed the proposal with a view toward providing the Legislature with an objective evaluation of information regarding the proposal and to describe those areas, if any, that were supportive of the legislative change, and which were not. The subcommittee met to organize the review process, review the worksheets and to discuss the proposal on October 9, October 23, November 13, and November 26, 2007.

In general, this subcommittee found that the responses given to the questionnaire were generally responsive to the questions posed. *There may be additional considerations that are not addressed, for which the Legislature may want to request additional information or clarification.*

In its entirety, the questionnaire completed by the proponents of the legislation, and which is completed by all proponents whose legislative proposal is forwarded to the Council of Health Boards, is designed to respond to legislative issues that range from review of initial request for creation of new licensing board to (as in this case) changes within regulation of an existing profession. Because of the broad scope of the questionnaire, some of the usual discussion and review that would be considered if a new board were being created, or if this were a new health-related occupation, is not applicable. Through the Council, however, an opportunity exists to review the proposed legislation and the impact of the changes in their entirety, with a goal of clarifying for the Legislature issues that may arise in the course of its consideration of the proposal.

It is not the role of this Council to either recommend or to withhold recommendation of proposed legislation, but to analyze submissions pertaining to proposed legislation and to offer factually based conclusions and other possible areas of inquiry in order for the Legislature to determine whether to grant licensure to an occupation.

An Executive Summary of major issues for legislative consideration may be found at the end of this report. Where the Council of Health Boards suggests specific lines for legislative inquiry, the suggestion is italicized.

A. Description of the Occupation

Athletic trainers are currently regulated by state statute, through the Athletic Trainers Advisory Council of the Minnesota Board of Medical Practice. The proposed legislative changes do not propose regulation of a "new" occupation, but, rather, propose to amend the statutes currently regulating the occupation.

There are currently 496 registered Athletic Trainers in Minnesota.

The reviewers noted that there was not sufficient information provided regarding the issue of whether the occupation is a "complete system" that includes a range of modalities and therapies. Similarly, the information provided does not appear to address fully whether the modalities and therapies provided by this occupation could be provided by members of different occupations.

The proposed legislation does not include any changes identified by the proponents as intending to change the scope of practice of Athletic Trainers. A legislative change may result in unintended changes to the scope that have not been considered by this committee; therefore, *the Legislature may wish to obtain information from stakeholders regarding this matter.*

B. Safety and Efficacy

The primary goal of health-related regulation is protection of the public, and public safety. This review is limited in scope, and Athletic Trainers have established recognition as a regulated profession under the auspices of the Board of Medical Practice. Nevertheless, *the Legislature may still wish to consider how the goal of protection of the public would be met by this legislative change.*

The legislative change would permit a temporary registration of an athletic trainer to qualified applicants, as is permitted in current law, but it would reduce the current temporary registration time permitted of athletic trainers from one year to six months; which is consistent with Physician Assistants and Respiratory Therapists also registered by the Board of Medical Practice.

Additionally, in regard to temporary registration, the proposed legislation also reduces the number of athletic trainers who may work under the direct supervision of a registered athletic trainer from four to two.

The proposed legislation provides for temporary registration of athletic trainers. Temporary registration would require that the temporary athletic trainer be qualified, and obtain a qualifying score on a credentialing examination within six months of the temporary registration. The current statute permits temporary registration for 12 months.

Athletic trainers practice under a protocol established and signed by a physician. The physician has the responsibility to oversee the athletic trainer's activities, and liability for these actions rests with the physician.

The Legislature may wish to review whether the current statute provides sufficient clarity regarding registration requirements and restrictions, particularly whether limits on an athletic trainer practicing without a physician signed protocol is sufficiently clear and provides sufficient public protection across the wide variety of settings in which athletic trainers may be found.

The proposed legislation also permits new practitioners a three-month grace period to obtain a physician signed protocol, as long as the primary employment site is monitoring the practice of the athletic trainer. The Board of Medical Practice, which is the regulatory Board for athletic trainers, notes that it interprets "new" practitioner as a practitioner who is newly credentialed in the State. The Council found that a possible ambiguity or lack of clarity exists in regard to the primary employment site and notes that it would be possible (since athletic trainers work in a number of work environments, e.g., schools, health clubs, etc.) for an athletic trainer to work with clients for this three-month period without the oversight of a physician. During this three month grace period, the employing agency has liability for the actions of the athletic trainer. A concern was raised that a three-month grace period without physician oversight could potentially permit some of the least experienced athletic trainers, if employed by a non-physician employer, to work without sufficient oversight. Additionally, an athletic trainer new to the State who had failed an athletic trainer examination could practice for up to three months without physician oversight. The Council identified a need to develop a mechanism for supervision and accountability for new applicants for initial registration during this grace period. ***The Council extensively discussed the provision of the proposed legislation that allows a three-month grace period during which new athletic trainers may practice before obtaining a physician signed protocol, and concluded that the public is not adequately protected during the grace period as proposed.*** *The Legislature is encouraged to obtain additional information from stakeholders regarding whether this provision offers sufficient public safety protection for those persons obtaining treatment from an athletic trainer working without a physician signed protocol and physician supervision.*

Currently, an Athletic Trainer operating under a physician-signed protocol is not required to inform the Board if a supervising physician, site, or protocol changes; the proposed statutory change would not alter this. Athletic Trainers are currently required to update the protocol form yearly upon registration renewal, and the form is kept on file by the athletic trainer. The Board of Medical Practice indicates that it does not currently audit protocol records. *The Legislature may wish to review whether the current statute offers sufficient clarity regarding the requirement of a physician-signed protocol, as well as the extent of physician oversight required.*

The Legislature may wish to obtain input from stakeholders in other occupations in regard to standards for temporary registration and grace periods.

The Council extensively reviewed the language change from "athlete" to "patient" to describe the person receiving treatment, including whether the change would affect the

types of clients and settings in which athletic trainers could work. If so, a question was raised whether patient safety would be sufficiently maintained.

The proponents of the change noted that athletic trainers currently work in many settings, and no change in this regard is anticipated. Some limited demographic information has been obtained regarding locations in which athletic trainers practice. *The Legislature may wish to explore this matter further.* At the same time, a question was raised whether changing the term "athlete" to "patient" might in some sense limit practice of athletic trainers in wellness-related practices, such as in health clubs. The terminology "athlete" or "patient" does not on its face change the scope of practice of athletic trainers (see Section D, Education and Training). The Council expressed concern that this change may bring unintended consequences resulting in expanded or limited scope of practice. If an unintended consequence resulted in an expanded scope of practice, the Legislature could consider whether the depth and knowledge of the education and training is sufficient to deal with pathology, complications, and co-morbidities of conditions presented by patients.

The Council considered a language change that would permit a primary employment site to oversee the work of the Athletic Trainer during a grace period. *The Legislature may wish to provide clarity to this requirement.*

Another concern was raised regarding whether a change from "athlete" to "patient" could affect safety in terms of an athlete having an underlying condition, undiagnosed, or co-morbidity concern that was undetected by an athletic trainer. Again, the legislative proposal does not change the current statute regarding the extent of an athletic trainer's responsibility to refer to other health professionals.

The Council considered the meaning of the proposed language change that deletes term "athlete/athletic". The intent of the legislation as described by the proponents is: to use consistent terminology for health care providers, i.e., health care providers as persons who take care of patients; the impact would be a terminology akin to that of other regulated health practitioners who are regulated by the Boards. The proponents posit that the language would be consistent terminology as a "person receiving care or treatment". The definition of the person receiving treatment from an athletic trainer does not change, and the term "athlete" does not prohibit Athletic Trainers from treating those who fall within the statutory scope of practice.

On balance, the Council refers to the Legislature the policy issue of whether "athlete" or "patient" is the more accurate term to describe the client base of an athletic trainer. The proponents of the statutory change are not seeking to change the title of the occupation from "athletic trainer". Athletic trainers are bound by HIPAA legislation as allied health care professionals, delivering direct service. The extent of informed consent of clients varies depending upon the situation. For example, parents sign informed consent under the rules of the Minnesota State High School League. The Legislature may wish to obtain additional information regarding informed consent requirements for treatment received from athletic trainers.

Currently, Subd. 5. of 148.7802, subd. 5 provides the following definition of athletic injury:

Athletic injury. "Athletic injury" means an injury sustained by a person as a result of the person's participation in exercises, sports, games, or recreation requiring physical strength, agility, flexibility, range of motion, speed, or stamina.

In light of this definition, the Legislature may wish to consider where the athletic trainer occupation fits in regard to other health-related occupations, e.g., whether repetitive motion would be included as an athletic injury, especially in consideration that athletic trainers could provide treatment of such work-related injuries, if they were based on exertion, flexibility, stamina and speed.

C. Government and Private Sector Recognition

Registered Athletic Trainers perform their work under a protocol established with a Board licensed physician. It is the physician's liability and responsibility to oversee the protocol of the athletic trainer.

The Legislature does not mandate payment for services of athletic trainers; this is a matter for insurers. Athletic trainer treatment is incident to physician billing, and is reimbursed. Medicare does not reimburse for this treatment. Automobile insurance, through operation of no-fault insurance policies, pays Athletic Trainers for services.

Credentials for registration as an Athletic Trainer are not subject to change under the proposed legislation, although the accreditation of an approved education program would be streamlined and limited to one nationally recognized organization.

The Council noted that neither the current statute nor the proposed legislation, require self-reporting by an athletic trainer of having failed an athletic trainer examination, including during neither the six month "temporary registration" period nor during the three month "grace period" during which new athletic trainers may practice. There is also no provision for termination of the "grace period" should the athletic trainer fail the required examination.

D. Education and Training

The members of the subcommittee considered several issues pertaining to education and training.

The Council reviewed the suggested statutory reference to a national certification organization, to consider whether the reference provides sufficient clarity on credentialing requirements. The Council determined that such a reference is not standardized across health-related occupations.

After review, the Council determined that the proposed legislation does not have an impact on the education and training of athletic trainers, and educational requirements remain the same.

The Council did not review any issues regarding education in the event the scope of practice were to change, since the legislative proposal under consideration does not specify a change in the scope of practice.

E. Practice Model and Viability of Profession

The Board of Medical Practice has a statutorily-established Athletic Trainers Advisory Council, which advises the Board of Medical Practice, who regulates the activities of the occupation. The pending legislation and its proponents do not seek to change this structure.

The proposed legislation does not add to or subtract from the number of practitioners who would be eligible to be registered as Athletic Trainers. There are 496 registered Athletic Trainers in the State, in many areas of the State, although the greatest number of Athletic Trainers are housed in metropolitan areas.

Information regarding the number of Athletic Trainers in clinical / non-clinical (e.g., schools, health clubs settings), is not currently available.

F. Regulatory Framework

Athletic trainers are currently regulated by the Medical Practice Board. The statute limits athletic trainers within the scope of practice through physician-signed protocol. The proponents of the legislation indicate that they are not currently regulated by an independent board of athletic trainers, and do not seek to have an independent board. Athletic trainers are currently a small group whose regulation is under the auspices of the Board of Medical Practice's Athletic Trainers Advisory Council; athletic trainers are, however, the largest group of the non-physician professions that is regulated by the Board of Medical Practice. The Board of Medical Practice represented that it is willing to continue its regulatory oversight of the occupation, and rendered an opinion that the proposed legislative change that changes the term "athlete" to "patients" does not change the scope or breadth of the Board's regulatory responsibilities toward the occupation. The Board has also represented that as a matter of oversight, it will review for possible clarification, its self-reporting and code of ethics requirements for athletic trainers as grounds for disciplinary action beyond required reporting upon annual athletic trainer renewal.

Athletic trainers practice with day-to-day independence. Regulation and oversight occurs through establishment of protocol between a physician and an Athletic Trainer. Neither regulations nor legislation specify the content and form of protocol. The Board of Medical Practice has a standard form for this purpose, but use of this form is not required. A protocol does not specifically state the frequency of physician contact, but the amount

of time in which an athletic trainer may evaluate and treat for an injury not previously diagnosed is limited to 30 days (*or a period of time as designated by the primary physician* on the protocol form). The Board of Medical Practice has interpreted this provision of the statute to be no longer than 30 days. No routine chart review is required by current law, and none would be required under any of the currently proposed legislative changes. Nothing in statute requires the physician and athletic trainer to have an employment relationship; the occupation represents that, most likely, the athletic trainer and physician work in different sites.

The proponents of changing the term "athlete" to "patient" to describe the persons who are treated by athletic trainers, represent that the reason for this change is simply to bring congruency to terminology among health practitioners in general, and to more accurately describe the current state of practice by athletic trainers, who frequently work outside medical settings, but whose work is performed by physician-established protocol. As proposed, the legislation would not specifically change scope of practice. There is no definitional change of the person treated, if the word "athlete" were changed to "patient".

It may be a matter of legislative deliberation to determine whether the term "patient" accurately describes the client base of athletic trainers, and the Legislature may wish to obtain additional information regarding the use of this term by athletic trainers.

Information was submitted to the Council from the Minnesota Athletic Trainers Association and the Minnesota Physical Therapy Association that indicates Minnesota would be the first state to change the client base terminology from "athlete" to "patient", but that Michigan has changed the term from "athlete" to "individual". The Council was unable to reach consensus regarding whether the proposed change would alter the status quo of the client base of athletic trainers, but agree that there is a potential of unintended consequences for any legislative change. *The Legislature may wish to verify information regarding use of the term "patient" with the term "athletic trainer" in the regulatory systems of other jurisdictions.*

Additional Comments

The Council recognizes that quality of care can benefit by regulation. In assessing a health profession, the Legislature will need to determine whether the proposed statutory changes will meet the needs of public safety.

Stakeholders will also be involved in addressing critical issues regarding this legislative proposal, including possible unintended consequences regarding scope of practice issues.

Executive Summary

Description of the Occupation:

- Athletic trainers are currently regulated by state statute, through the Athletic Trainers Advisory Council of the Minnesota Board of Medical Practice. The proposed legislative changes do not propose regulation of a "new" occupation, but, rather, propose to amend the statutes currently regulating the occupation.

- Proposed legislative changes include changing the term "athlete" to "patient"; deleting obsolete references to accreditation of training programs; and modifying length of temporary registration from one year to six months; and providing for a three-month grace period for new athletic trainers to be employed without physician protocol.

Safety and Efficacy:

- Current law permits issuance of a temporary registration for up to one year; the proposed statutory change permits issuance of a temporary registration for up to six months; this also permits a qualified athletic trainer to practice for up to six months without having passed a credentialing examination. *The Legislature may wish to modify the parameters of such temporary registrations, specifically considering the extent of supervision provided during this period as well as clarifying any conditions for such a temporary registration, e.g., signed physician protocol.* The Council has identified a need to develop a mechanism for supervision and accountability for new applicants for initial registration during this grace period.

- One provision of the proposed legislation allows practice for a three-month grace period for new athletic trainers to obtain a physician signed protocol. ***The Council reviewed this provision, and concluded that the public is not adequately protected during the grace period as proposed.*** *The Legislature is encouraged to obtain additional information from stakeholders regarding whether this provision offers sufficient public safety protection for those persons obtaining treatment from an athletic trainer who may be working without a physician signed protocol and physician supervision.* The standard that is imposed during any grace period, including physician supervision, should be at least comparable to, if not more stringent than, that required of registered athletic trainers.

Government and Private Sector Recognition:

- Athletic trainers are currently regulated by state statute, through the Athletic Trainers Advisory Council of the Minnesota Board of Medical Practice. The proposed legislative changes do not propose regulation of a "new" occupation, but, rather, propose to amend the statutes currently regulating the occupation.

- The Council noted that neither the current statute nor the proposed legislation require self-reporting by an athletic trainer of having failed an athletic trainer examination, neither during neither the six month "temporary registration" period nor during the three month "grace period" during which new athletic trainers may practice.

Education and Training:

- After review, the Council determined that the proposed legislation does not have an impact on the education and training of athletic trainers, and educational requirements remain the same.

Practice Model and Viability of Professions:

- The Board of Medical Practice has a statutorily-established Athletic Trainers Advisory Council, which advises the Board of Medical Practice, who regulates the activities of the occupation. The Board of Medical Practice has a statutorily-established Athletic Trainers Advisory Council, which reviews and regulates the activities of the occupation. The pending legislation and its proponents do not seek to change this structure.

Regulatory Framework:

- Athletic trainers are currently regulated by the Medical Practice Board, which represented that it is willing to continue its regulatory oversight of the occupation. The Board has also represented that as a matter of oversight, it will review for possible clarification, its self-reporting and code of ethics requirements for athletic trainers as grounds for disciplinary action beyond required reporting upon annual athletic trainer renewal.

- Proposed legislative changes include changing the term "athlete" to "patient". The Board representative to the Council rendered an opinion that this proposed legislative change does not change the scope or breadth of the Board's regulatory responsibilities toward the occupation. *It may be a matter of legislative deliberation to determine whether the term "patient" accurately describes the client base of athletic trainers, and the Legislature may wish to obtain additional information from stakeholders regarding the use of this term by athletic trainers.*

- Information was submitted to the Council from the Minnesota Athletic Trainers Association and the Minnesota Physical Therapy Association that indicates Minnesota would be the first state to change the client base terminology from "athlete" to "patient", but that Michigan has changed the terminology from "athlete" to "individual". The Council was unable to reach consensus regarding whether the proposed change would alter the status quo of the client base of athletic trainers, but agree that there is a potential of unintended consequences for any legislative change. *The Legislature may wish to verify information regarding use of the term "patient" with the term "athletic trainer" in the regulatory systems of other jurisdictions.*