

Attorney General of New Mexico

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April 2, 2008

The Honorable Gail Chasey
New Mexico State Representative
1206 Las Lomas Rd. NE
Albuquerque, NM 87106

Re: Opinion Request – Scope of Athletic Trainer Practice

Dear Representative Chasey:

You have requested our advice concerning House Bill 88, 2007 N.M. Laws, ch. 347, § 1 (“HB 88”), which amended Section 52-4-1 of the New Mexico Workers’ Compensation Act and added licensed athletic trainer to the definition of health care provider. More specifically, you ask (1) whether HB 88 authorizes an athletic trainer, licensed pursuant to the Athletic Trainer Practice Act, NMSA 1978, Sections 61-14D-1 through 61-14D-19 (1993) (the “Act”), to treat a worker who is not an “athlete,” as that term is defined in the Act, and (2) whether a licensed athletic trainer who willfully treated a worker he or she knew was not an “athlete” would be subject to discipline under Section 61-14D-16(A)(7) for willfully practicing beyond the scope of “athletic training,” as defined in the Act.

Based on our examination of the relevant New Mexico statutes, opinions and case law authorities, and on the information available to us at this time, we conclude that HB 88 does not authorize an athletic trainer, licensed pursuant to the Athletic Trainer Act, to treat a worker who is not an athlete injured in an athletic setting. We further conclude that the Athletic Trainer Practice Board may properly subject a licensed athletic trainer to discipline if, based on substantial evidence, it finds that the athletic trainer willfully or negligently practiced athletic training beyond his or her authorized scope of practice.

As a preliminary matter, there are several rules of statutory construction that guide our analysis. First, in construing a statute, our goal is to give effect to legislative intent, which intent is evidenced primarily through the statute’s language. See Souter v. Ancae Heating and Air Conditioning, 2002-NMCA-078, 132 N.M. 608, 611. Second, under the plain meaning rule, we give statutory language its ordinary and plain meaning unless the Legislature indicates a different interpretation is necessary. See Cooper v. Chevron, 2002-NMSC-020, 132 N.M. 382, 388. We read statutes concerning the same subject matter together as harmoniously as possible in a way

that facilitates their operation and achievement of their goals. See Jicarilla Apache Nation v. Rodarte, 2004-NMSC-035, 136 N.M. 630, 634-5.

Under the New Mexico Workers' Compensation Act, NMSA 1978, Sections 52-1-1 through 52-1-70, employers generally have an obligation to provide reasonable and necessary health care services from a health care provider for an injured worker, injured in an accident arising out of and in the course of his employment. See NMSA 1978, § 52-1-49 (1990). In other words, a worker is eligible to receive and have the employer pay for the services of a health care provider if the care is related to a compensable injury and such services are deemed reasonable and necessary. See NMSA 1978, § 52-4-5 (1993).

Section 52-4-1 defines the term "health care provider," for purposes of the New Mexico Workers Compensation Act, and includes a variety of health care professionals holding a professional or occupational license issued by the state. See NMSA 1978, § 52-4-1 (2007). A licensed professional falling within the definition of "health care provider" is entitled to payment for services rendered to an injured worker, if the services are related to the worker's injury and are reasonable and necessary. See Salcido v. Transamerica Ins. Group, 102 N.M. 217, 219, 693 P.2d 583, 585 (1985) (worker is entitled to payment for services rendered by chiropractor because licensed chiropractor is within the definition of "health care provider"). Until the enactment of HB 88, the term "health care provider" did not include licensed athletic trainers, see NMSA 1978, § 52-4-1 (1993), and employers were not bound to pay for the services rendered by an athletic trainer to an injured worker/athlete for an otherwise compensable injury.

With the enactment of HB 88, licensed athletic trainers now fall within the definition of "health care provider" in Section 52-4-1. See 2007 N.M. Laws, ch. 347, § 1. The title of HB 88 indicates that it was intended to extend the definition of "health care provider" within the worker's compensation arena to include licensed athletic trainers. See id. A comparative reading of HB 88 and Section 52-4-1 (1993) before HB 88 was enacted confirms that it did this and little more. HB 88 did not amend or otherwise alter the landscape created and governed by the Athletic Trainer Act. It did not extend or amend an athletic trainer's authorized scope of practice to allow athletic trainers to treat non-athletes.

The Athletic Trainer Practice Act defines an athletic trainer's scope of practice:

The practice of athletic training includes the prevention, care and rehabilitation of athlete's injuries. Athletic trainers may evaluate and treat athletes pursuant to the written prescription, standing order or protocol of a licensed physician; provided that an athletic trainer may treat postsurgical conditions only pursuant to the written prescription of that athlete's surgeon. To carry out these functions, an athletic trainer may use exercise and physical modalities such as heat, light, sound, cold, electricity or mechanical devices related to rehabilitation and treatment. *Nothing in the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978] shall be construed to allow an athletic trainer to provide the initial treatment or evaluation of an athlete injured in a non-athletic setting.*

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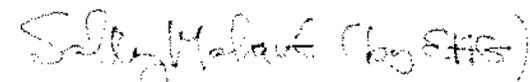
NMSA 1978, Section 61-14D-6 (1993) (emphasis added.) The Act also defines "athlete" as "a person trained to participate in exercise requiring physical agility and stamina," and "athletic trainer" as "a person who, with the advice and consent of a licensed physician, practices the treatment, prevention, care and rehabilitation of injuries incurred by athletes." NMSA 1978, § 61-14D-3 (1993).

By its very definition, an athletic trainer's scope of practice is limited to the treatment of athletes injured in an athletic setting, with the advice and consent of a licensed physician. See § 61-14D-6 (1993). It expressly prohibits athletic trainers from initially treating athletes injured in a non-athletic setting. It also clearly does not authorize athletic trainers to treat non-athletes, whether or not these have been injured in an athletic or non-athletic setting. See id. Therefore, within the context of a worker's compensation claim and without violating his or her authorized scope of practice, HB 88 is applicable only when an athletic trainer treats a worker, with the advice and consent of a licensed physician, and the worker is an athlete injured while participating in an athletic activity and said activity is one arising out of and in the course of the worker/athlete's employment.

An athletic trainer who treats a non-athlete may be subject to discipline for practicing beyond the scope of athletic training practice. The Act confers upon the Athletic Trainer Practice Board (the "Board") the authority to take disciplinary action against and conduct hearings upon charges relating to the discipline of licensees. See NMSA 1978, § 6-14D-9 (1993). The Act expressly authorizes the Board to revoke or suspend any license upon finding that a licensee "is guilty of willfully or negligently practicing beyond the scope of athletic training as defined in the Athletic Trainer Practice Act." See NMSA 1978, § 16-14D-16(A)(7) (1993). In accordance with this authority, the Board may discipline a licensed athletic trainer for practicing beyond the scope of athletic training if it finds that the athletic trainer treated a worker or other person who is not also an athlete injured in an athletic setting, just as it may discipline an athletic trainer for violating any other provision of the Act or the Board's regulations.

Your request to us was for a formal Attorney General's Opinion on the matters discussed above. Such an opinion would be a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General's Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public.

Very truly yours,



SALLY MALAVÉ

Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General