Sunset Evaluation: Regulation of Athletic Trainers

A Report to the Governor
and the Legislature of
the State of Hawai‘i

Report No. 17-08
September 2017

OFFICE OF THE AUDITOR
STATE OF HAWAI‘I

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STATE OF HAWAIʻI

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Foreword

This sunset report presents our findings and recommendations on whether the State's continued oversight of athletic trainers complies with policies in the sunset law and whether there is a reasonable need to protect the health, safety, and welfare of athletes.

Leslie H. Kondo
State Auditor

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Auditor's Summary

Sunset Evaluation: Regulation of Athletic Trainers

Report No. 17-08

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The current registration requirement for athletic trainers should be extended beyond its current sunset date

IN REPORT NO. 17-08, *Sunset Evaluation: Regulation of Athletic Trainers*, we conclude that regulation of athletic trainers is consistent with and supported by the policy criteria for professional licensing in the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes (HRS). Athletic trainers are healthcare professionals who provide injury prevention, treatment and assessment of injuries, and rehabilitation of injuries, among other services. In our view, the current registration requirement for athletic trainers is reasonably necessary to protect the health and safety of athletes and others under their care. By requiring athletic trainers to be certified by the Board of Certification for Athletic Trainers (BOC), the State is ensuring that the practice of athletic training conforms with industry standards that are widely accepted by athletic trainers.

What do athletic trainers do?

Athletic trainers specialize in the prevention, diagnosis, and treatment of muscle and bone injuries, and are usually first at the scene to provide immediate care when athletic injuries occur. Most injuries involve strains, sprains, and bruises, though bone breaks and joint dislocations also occur.

Registration requirements and Impact

The regulatory program, established by the Legislature in 2012, requires that, to register as an athletic trainer in Hawai‘i, an applicant must have completed BOC educational and certification requirements and certified by the board. To be eligible for the BOC certification examination, applicants must graduate from a Commission Accreditation of Athletic Training Education-accredited athletic training program and demonstrate competency in injury and illness prevention, emergency care, therapeutic intervention, and health care administration. To maintain certification, athletic trainers must continue taking medically related classes and conform to a standard of professional practice.

We found that regulation is reasonably necessary because the decisions an athletic trainer makes, whether during a game, practice, or try-out, can have significant impacts on a player’s health, safety, and welfare. They are responsible for first diagnoses of injuries ranging from concussion to heat-stroke and making return-to-play/return-to-practice decisions. Athletic trainers do initial treatments such as splinting, positioning, and if needed will call 911, or an on-call physician.

We also found that the overall cost of regulation on athletic trainers is relatively minor given the profession’s impact on health and safety. Moreover, regulation is not overly exclusive in favor of Hawai‘i athletic trainers.

1,092

THE NUMBER of concussions reported by 67 Hawai‘i public and private schools during the 2016 school year. The Hawai‘i concussion education program requires that a school’s athletic trainer demonstrate competency to monitor a concussed student athlete’s return to activity.

3.5 million

The number of U.S. children ages 14 or younger that get hurt annually playing sports or participating in recreational activities.

Hawai‘i Regulatory Licensing Reform Act

The Hawai‘i Regulatory Licensing Reform Act requires the Auditor to analyze proposed regulatory measures that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls. The policies that the Legislature adopted regarding regulation of professions and vocations are as follows:

The State may regulate professions and vocations only where reasonably necessary to protect the health, safety, or welfare of consumers, and not that of the regulated profession or vocation;

The State must regulate professions or vocations when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;

Evidence of abuses by providers of the service must be given great weight in determining whether regulation is desirable;

Regulation must be avoided if it will artificially increase the cost of goods and services to consumers, except in cases where this cost is exceeded by the potential danger to the consumer;

Regulation must not unreasonably restrict entry into professions and vocations by all qualified persons; and

Aggregate costs for regulation and licensure must not be less than the full costs of administering that program.

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SUNSET EVALUATION:
Regulation of Athletic Trainers

SINCE 2012, THE STATE OF HAWAI'I has regulated athletic trainers. Athletic trainers must be certified by the Board of Certification Inc. (BOC), which is a national credentialing organization that provides a certification program for athletic trainers, and register with the Department of Commerce and Consumer Affairs (DCCA) before they are allowed to perform the duties and responsibilities of an athletic trainer. The State's regulation of athletic trainers is to "sunset" on June 30, 2018, after which there will be no government oversight of the profession unless the Legislature enacts legislation to continue regulating athletic trainers.

Based on our review of the current regulatory program, we conclude that regulation of athletic trainers is consistent with and supported by the policy criteria for professional licensing in the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, Hawai'i Revised Statutes (HRS). In our view, the current registration requirement for athletic trainers is reasonably necessary to protect the health and safety of athletes, and others under their care, and should therefore be extended beyond its current sunset date.

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Athletic Trainers: On-field First Responders

ATHLETIC TRAINERS specialize in the prevention, diagnosis, and treatment of muscle and bone injuries, and are usually first at the scene to provide immediate care when athletic injuries occur. Athletic trainers and personal or fitness trainers are not synonymous. Athletic trainers may work under the supervision of a physician and are recognized by the American Medical Association as healthcare professionals. Athletic trainers coordinate treatment with either a team or family physician. The level of physician oversight can range from daily or weekly visits by a physician at training facilities to regular physician reviews of athletic trainer-prepared player injury reports. Typically, athletic trainers will ensure student athletes have completed physician consent forms and follow whatever conditions a physician places on a student's athletic activities.

Objectives of the Study

1. Assess whether the current regulation of athletic trainers is consistent with and supported by policies in the Hawai'i Regulatory Licensing Reform Act, specifically Section 26H-2, HRS, which limits regulation of professions to those where government oversight is reasonably necessary to protect the health, safety, or welfare of consumers of the profession's service.

2. Assess whether the public interest requires the regulation of athletic trainers be reenacted, modified, or permitted to expire.[1]

Overview of the Athletic Trainer Program

In 2012, the Legislature established a program to regulate the profession of athletic trainer, called "the Athletic Trainer Registration Act," which requires any person who engages in the "practice of athletic training" to register with the DCCA. The "practice of athletic training" is defined in the statute to mean the application of principles and methods to:

1. Preventing athletic injuries;

2. Recognizing, evaluating, and assessing athletic injuries and conditions;

3. Providing immediate care of athletic injuries, including common emergency medical care;

4. Treating, rehabilitating, and reconditioning athletic injuries;

5. Administering athletic training services and organization; and

6. Educating athletes.

The Athletic Trainer Registration Act requires that an athletic trainer work at the direction of the treating physician. If the physician is not physically present, the athletic trainer must receive such direction through the physician's written athletic service plans or protocols.

The DCCA director is charged with administering the registration requirements of the program, which includes the power to, among other things, issue and renew registrations as well as to deny and refuse to renew registrations; suspend and revoke registrations; and establish fees.

[1] HRS section 26H-4 (Supp. 2016) requires the Auditor to analyze the program prior to its July 30, 2018, repeal date.

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Exhibit 1
What an Athletic Trainer Does

MOST HAWAI'I ATHLETIC TRAINERS work in secondary schools; however, other work settings include universities, hospitals, and clinics. Every Department of Education (DOE) high school has at least one athletic trainer.

Athletic trainers prepare athletes with taping, stretching, and application of heat treatments and notify coaching staff of which student athletes are ready to play and whether their activities are restricted by ailments. The athletic trainer also takes ambient temperature readings that account for humidity and wind so training sessions can be modified, if needed, to reduce the risk of heat illnesses. If there is an injury, the athletic trainer, generally, is the first on scene and will do initial treatment such as splinting, positioning, and if needed will call 911, or an on-call physician. Most injuries involve strains, sprains, and bruises, though bone breaks and joint dislocations also occur.

When providing clinical evaluations and diagnoses on athletes, athletic trainers use a range of skills, including, but not limited to, the following:[1]

- Obtaining a thorough medical history, including an assessment of underlying systemic disease and consideration of its potential contributions to the current disorder;
- Conducting a physical examination, including (as relevant) observation of the patient/client performing functional tasks, such as walking, reaching, running, or throwing; and
- Arriving at a differential diagnosis (including conditions that cannot be ruled out based on the examination), determining functional deficits, and understanding the impact of the condition on the client's life.

When performing rehabilitation services, athletic trainers utilize skills that include:

- Manual therapy (e.g., massage, joint mobilization and muscle energy techniques [a form of stretching]);
- Techniques to restore joint range of motion and muscle extensibility;
- Exercises to improve strength, endurance, speed and power;
- Agility training;
- Exercises to improve cardiorespiratory fitness; and
- Sports-specific and/or functional exercises.

Athletic trainers provide prevention, evaluation, treatment, and rehabilitation care of musculoskeletal injuries, which involve muscles, bones, ligaments, and tendons, and can include ankle sprains, rotator cuff tears, and anterior cruciate ligament (ACL) tears.

Athletic trainers also attend sporting events and practices, during which they are responsible for first diagnoses of injuries ranging from concussion to heat-stroke, and making return-to-play/return-to-practice decisions.

Athletic trainers are trained to conduct emergency medical procedures that include:

- airway establishment
- neutral spine alignment
- use of a defibrillator

[1] Colorado Department of Regulatory Agencies 2014 Sunset Review: Athletic Trainer Practice Act.

Source: Hawai'i Athletic Trainers' Association and Office of the Auditor

Any person who violates the provisions of the program is subject to a fine of up to $1,000 per day.

Since the program took effect, there have been six athletic trainer-related complaints, all of which involved allegations of unlicensed activity, according to DCCA's Regulated Industries Complaints Office.

DCCA reports that registration fees, which is $285 per applicant, generated revenues of $118,073 from fiscal year 2013 through April 2017, exceeding estimated program costs by $23,173.

Athletic trainer education requirements

TO BE ELIGIBLE for the BOC examination, applicants must graduate from a Commission on Accreditation of Athletic Training Education-accredited athletic training program and demonstrate competency in injury and illness prevention, emergency care, therapeutic intervention, and health care administration. Instruction involves teaching of required subject matter in structured classroom, clinical, or laboratory environments. To maintain certification, athletic trainers must continue taking medically-related classes and conform to a standard of professional practice. According to the National Athletics Trainers' Association, 70 percent of athletic trainers have a master's degree.

Registration Requirements

To register as an athletic trainer in Hawai‘i, an applicant must have completed the BOC's educational and certification requirements and be certified by the BOC. Applicants must provide the department with a copy of the BOC certification and information about any complaints filed against them with the BOC or with any state agency that regulates athletic trainers. Upon payment of a registration fee of $285, applicants are registered as athletic trainers and are entitled to perform the duties of an athletic trainer. As of January 2017, there were 152 active registered athletic trainers in Hawai‘i.

The statute includes certain exceptions to the registration requirement: Students in an athletic trainer education program working under the supervision and guidance of a registered athletic trainer; individuals serving in the armed forces or another federal agency who engage in activities for which registration is required; individuals invited to lecture or teach the practice of athletic training by a school or professional association; individuals who possess valid licenses, registrations, or certifications from another jurisdiction who accompany an athlete or athletic team to Hawaii for a temporary period of time.

Athletic trainers are required to notify DCCA of any changes in their respective registration information within 30 days of the change and must renew their registration every three years.

PHOTO: THINKSTOCK.COM

Exhibit 2

The Potential Stakes for an Athletic Trainer

THE DECISIONS an athletic trainer makes, whether during a game, practice, or try-out, can have a significant impact on a player's health, safety, and welfare, either positive or negative. By way of example: This year, the Legislature appropriated $21,000 to settle a lawsuit filed against a Waiʻanae High School trainer for an incident that occurred in 2012, prior to regulation of the profession in Hawaiʻi. In its testimony supporting the appropriation, the Department of Attorney General described the allegations against the trainer as follows:

A student at Waiʻanae High School was injured during football try-outs. The student arrived to practice with a boot on his foot and then presented a note to the trainer from his doctor stating he could not do running and jumping activities, but could do conditioning drills and weightlifting. The coach allowed the student to participate in the drill of the day when he dropped to the ground in pain. The trainer diagnosed him as having a slipped patella, moved the patella back into place, and then told him to ice it and go home. Later that night the student's mother took him to the Kaiser emergency room where he was diagnosed with a torn ACL. He obtained surgery and began physical therapy. The settlement represents 80 percent of the medical bills resulting in the student's surgery and physical therapy.

Source: The Department of the Attorney General

The decisions an athletic trainer makes, whether during a game, practice, or try-out, can have a significant impact on a player's health, safety, and welfare, either positive or negative.

Exhibit 3

Sports Injuries are Very Common

While collision sports such as football have a greater risk for injury, all kinds of athletic activities have the potential for injury, whether from the trauma of contact with other players or from straining or breaking a body part.

3.5 million+

Number of children ages 14 and younger that get hurt annually playing sports or participating in recreational activities.

Percentage of traumatic brain injuries among American children caused by sports and recreational activities.

62%

Percentage of organized sports-related injuries that occur during practice.

Regulation Ensures that Athletic Trainers are Educated in Acute-Care Treatments Including Concussion Management

When enacting athletic trainer regulation in 2012, the Legislature also created a concussion education program under Act 197, Session Laws of Hawai‘i (SLH) 2012. This program was subsequently amended by Act 262, SLH 2016, to require the University of Hawai‘i (UH), DOE, and Hawai‘i High School Athletics Association (HHSAA) to develop a concussion monitoring and educational program for school athletes that defines a “licensed health care provider” as, among other things, a certified or registered athletic trainer. The concussion education program allows a school’s athletic trainer, who is trained in concussion management, to clear student athletes for participation in athletics and to make return-to-play decisions when a concussion injury is suspected. During the 2016 school year, 67 public and private schools participating in the concussion program reported 1,092 concussions. Data collected during a six-year period suggests an increasing number of concussions among Hawai‘i’s student athletes; however, part of that increase is attributed to heightened concussion awareness and enhanced reporting. The Hawai‘i concussion education program requires that a school’s athletic trainer demonstrate competency to monitor a concussed student

athlete's return to activity. Thus, Hawai'i's licensing program that requires applicants be BOC-certified ensures that athletic trainers diagnose and treat injuries, including concussions, properly with a solid foundation of medical competencies.

Licensing Does Not Unreasonably Restrict the Practice of Athletic Training in Hawai'i

The overall cost of regulation on athletic trainers is relatively minor given the profession's impact on health and safety. Additionally, by requiring athletic trainers to be BOC-certified, the State is ensuring that the practice of athletic training conforms with industry standards that are widely accepted by athletic trainers.

Further, Chapter 436H, HRS, is not overly exclusive in favor of Hawai'i athletic trainers as it provides exemptions for, among other things, athletic trainers who travel to Hawai'i with sports teams, allowing them to practice as athletic trainers in-state on a temporary basis, provided that the individual is registered, licensed, or certified in another jurisdiction. We note, however, that California is the only state that does not regulate athletic trainers. As a result, visiting trainers who accompany athletes or teams from California, and are not regulated in another jurisdiction do not qualify for the exemption to practice in Hawai'i. We recommend that the Legislature consider expanding the exception to include athletic trainers who accompany California athletes and teams and possess a current BOC certification.

Chapter 436H also does not restrict the ability of other licensed health professionals, such as physicians, occupational therapists and physical therapists, practicing within their own recognized scopes of practice, from conducting athletic-training-related activities. The law also excludes athletic training students, certain armed forces members, and other federal employees from required registration and does not prevent them from performing the duties of an athletic trainer.

1,092

Number of concussions reported by 67 Hawai'i public and private schools during the 2016 school year. The Hawai'i concussion education program requires that a school's athletic trainer demonstrate competency to monitor a concussed student athlete's return to activity.

Athletic Trainer Certification and Registration Requirements Protect the Public Interest and Should be Maintained

An athletic trainer's job is to prevent injuries and to assess and treat injuries when they occur, whether they be a contusion or a concussion. While many sports injuries may be minor, some could be life-threatening or result in permanent damage. Because athletic trainers often are the first on the scene of such injuries, they must be able to properly recognize, evaluate, and treat athletes on the spot, which means that athletic training professionals affect public health and safety.

Chapter 436H, HRS, which requires that individuals who engage in such athletic training activities, with certain exceptions, be registered with DCCA, assures that athletic trainers are BOC-certified and educated prior to practicing in Hawai‘i. Therefore, we recommend that the current program of registration of athletic trainers that is based on BOC certification should be extended beyond June 30, 2018.

Athletic trainers have a professional organization, which certifies and maintains standards.

THE PRIMARY professional association for athletic trainers is the National Athletic Trainers' Association, which represents more than 43,000 members—the majority of all athletic trainers practicing in the United States. To earn the title of certified athletic trainer, applicants must pass a BOC-certified examination. The BOC is the only accredited certification program for athletic trainers in the United States.

Summary of Findings

1. Athletic trainers are healthcare professionals who provide injury prevention, treatment and assessment of injuries, and rehabilitation of injuries, among other services. Athletic trainers also provide emergency medical care and are involved in concussion monitoring and education. The services that an athletic trainer provides may affect the health and safety of athletes, and the proficiencies required by the current regulatory scheme are reasonably necessary to protect athletes under an athletic trainer's care.

2. The current regulation of athletic trainers does not impose unreasonable restrictions on individuals entering the profession and does not meaningfully increase the cost of athletic trainer services.

3. The public interest requires that the profession of athletic trainer continue to be regulated and the program requiring athletic trainers register with DCCA be reenacted. However, the Legislature should consider whether the exceptions to the registration requirement should be expanded to allow athletic trainers accompanying California athletes and teams who are not registered, licensed, or certified in another jurisdiction to practice as athletic trainers, if for example, they are currently BOC-certified.

Appendix A
Scope and Methodology

The Legislature mandated that providers of services that jeopardize consumer health, safety, or welfare be licensed.[1] This is to ensure that the State only regulates a profession or a vocation when reasonably necessary to protect consumers. In accordance with the Hawai‘i Regulatory Licensing Reform Act, the Auditor must determine and report on whether the athletic trainer regulation complies with the State's policies for regulating professions and vocations; and whether public interest requires that the law establishing the program be reenacted, modified, or permitted to expire after its June 30, 2018, repeal date.[2] Our examination included determining whether the services provided by athletic trainers jeopardize consumer health, and whether such regulation unreasonably restricts entry into the profession. Our evaluation also accounts for complaints regarding athletic trainer services, the impact of regulation on the costs of such services, and whether licensing fees cover the costs of regulating athletic trainers.[3]

To accomplish the objectives of our sunset evaluation, we reviewed the literature on athletic trainers, their current scope of practice, their education, and regulation in other states. We inquired about complaints filed at DCCA's Regulated Industries Complaints Office, its Office of Consumer Protection, and the Hawai‘i Better Business Bureau to determine harm to consumers. We reviewed files and other documentation pertaining to regulatory operations at DCCA's licensing division. We also contacted staff at the Hawai‘i Athletic Trainers' Association, DCCA, DOE, HHSAA, and UH. We conducted interviews with staff of these organizations as well as certified athletic trainers. We also attempted to identify the costs and possible impacts of the regulation. The assessment was conducted from April through May 2017.

[1] Section 26H-2, HRS.
[2] Sections 26H-4 and 26H-5, HRS.
[3] Section 26H-2, HRS.

Appendix B
Exemptions to the Athletic Training Program

Section 436H-5, HRS, is not intended to restrict the practice of other licensed healthcare providers practicing within their own recognized scopes of practice and includes other exceptions to the registration requirement:

(1) An individual who possesses a valid license issued under Chapter 453, 457G, or 461J who, when acting within the scope of practice allowable under the individual's license, performs the same or similar functions as an individual registered pursuant to this chapter;

(2) Students in an educational program for athletic trainers who participate in activities conducted as part of the educational program under the supervision and guidance of an athletic trainer registered under this chapter;

(3) An individual serving in the armed forces of the United States, the United States Public Health Service, the Department of Veterans Affairs, or any other federal agency that engages in activities regulated under this chapter as a part of the individual's employment;

(4) An individual who is invited to conduct a lecture, clinic, or demonstration regarding the practice of athletic training by a school, professional association, professional society, or other similar entity approved by the department by rule pursuant to Chapter 91; provided that the individual does not establish a place of business or regularly engage in the practice of athletic training within the State;

(5) An individual who possesses a valid license, registration, or certification from another jurisdiction who accompanies an athlete or team of athletes into this State for a temporary period; provided that the individual shall only attend to the needs of that athlete or team of athletes and those persons who travel with that athletic group or team in a capacity other than as a spectator;

(6) An individual who possesses a valid license, registration, or certification from another jurisdiction who is invited to engage in the practice of athletic training under the supervision and control of a sponsoring entity for a limited time and solely for a special event; or

(7) An individual who is an athletic trainer and a patient to himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself to be an athletic trainer.

Nothing in this chapter shall be construed to limit or prohibit the administration of routine assistance or first aid by a person who is not a registered athletic trainer for injuries or illnesses sustained at an athletic event or program.

Office of the Auditor's Comments on the Affected Agencies' Responses

WE TRANSMITTED A DRAFT of this report to the Department of Commerce and Consumer Affairs (DCCA) and the Hawai'i Athletic Trainers' Association (HATA) on August 28, 2017. As required by Section 26H-5, Hawai'i Revised Statutes, DCCA was afforded 30 days to review and comment on the report. On September 14, 2017, we received a response from DCCA in which the agency agreed with our recommendations. HATA's response, received on September 11, 2017, stated that the association supported our recommendation to continue the regulation of athletic trainers, but opposed expanding the regulatory program to allow certified athletic trainers from California to practice in Hawai'i on a temporary basis. The responses from DCCA and HATA are included as attachments 1 and 2, respectively.

DAVID Y. IGE
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September 13, 2017

Mr. Leslie Kondo
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mr. Kondo:

The Department of Commerce and Consumer Affairs ("Department") would like to thank you for the evaluation conducted by your office regarding the regulation of athletic trainers. The Department also appreciates the opportunity to respond to the recommendations contained in the report, which were as follows:

1. The Legislature should continue to regulate athletic trainers by repealing Section 26H-4(b), HRS, thereby reenacting Chapter 436H, HRS *(Athletic Trainers).*

   We defer to the Legislature on this matter, but the Department supports the continued regulation of athletic trainers.

2. If regulation continues, the Legislature should:

   Consider whether the exceptions to the registration requirement should be expanded to allow athletic trainers accompanying California athletes and teams who are not registered, licensed, or certified in another jurisdiction to practice as athletic trainers on a temporary basis, if for example, they possess a current BOC certification.

The Department agrees with this recommendation.

Once again, thank you for the opportunity to review your report and for the ability to offer our comments.

Sincerely,

Catherine P. Awakuni Colón
Director

CPAC/isk

c: Ms. Celia Suzuki, Licensing Administrator
Mr. Kedin Kleinhans, Executive Officer

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September 11, 2017

VIA EMAIL

Mr. Leslie Kondo
State Auditor
465 S. King Street, Room 500
Honolulu, HI 96813

Re: Comments on the Draft Report Sunset Review of the Regulation of Athletic Trainers

Dear Mr. Kondo:

I represent the Hawaii Athletic Trainers Association (HATA) and was asked to submit comments on their behalf. HATA supports the recommendation that the current registration requirement for athletic trainers be extended beyond its sunset date and would also like to add some comments for consideration.

Since its enactment in 2012, The Athletic Trainer Registration Act has been successful in establishing a registration procedure that authenticates qualified athletic trainers and manages complaints. The main success has been to increase the safety for Hawaii athletes and especially the many youth participating in competitive sports.

The second recommendation proposed in the draft report asks the legislature to expand the exception to include athletic trainers from California with a Board of Certification Inc. (BOC) certification. Currently California athletic trainers

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are not regulated in their state and therefore do not qualify for the exemption to practice in Hawaii.

HATA does not see the need to pursue this recommendation at this time as there is no demand or need being expressed from the California athletic trainers who visit the state. HATA supports removing this recommendation from the draft report in order for additional information to be gathered on the legal implications of creating a new exception.

Thank you for the opportunity to provide comments. Please feel free to contact me should you have any questions or desire additional information.

Sincerely,

Robert S. Toyofuku
On behalf of the
Hawaii Athletic Trainers Association (HATA)

cc: Sam Lee