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*University of Central Florida*



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PROFESSIONAL LIABILITY INSURANCE FOR ATHLETIC TRAINERS: A  
CROSS SECTIONAL STUDY OF ATHLETIC TRAINERS WHO DO PER  
DIEM WORK

by

KAMEELAH JADE BELGRAVE

A thesis submitted in partial fulfillment of the requirements  
for the degree of Bachelor of Science  
in the School of Kinesiology and Physical Therapy  
in the College of Health Professions and Sciences  
at the University of Central Florida  
Orlando, Florida

Spring Term, 2020

Thesis Chair: Kristen Schellhase, Ed.D, LAT, ATC

## ABSTRACT

**Context:** Many secondary school athletic trainers (ATs) complete per diem work as a way to supplement their income. Working per diem means the AT provides services to events that are not part of their main employment. Since this type of work is not connected to their main employment, the AT may lack appropriate professional liability insurance (PLI). PLI is a type of insurance that protects healthcare professionals from bearing the entire cost of defending a malpractice claim made by a former or current patient. Anecdotally, many ATs believe that the PLI provided by their main employer covers all health care services they provide, although this is not typically the case. Working without PLI is a legally risky behavior for ATs because defense against a malpractice claim could lead to financial ruin. **Objective:** This study examined ATs knowledge about the importance of having PLI and situations where they remain unprotected.

**Design:** Cross-sectional. **Setting:** Participants completed a web-based questionnaire. **Patients or Other Participants:** Responses from 66 secondary school ATs were analyzed. **Main Outcome Measures:** The web-based survey was distributed to evaluate the level of knowledge secondary school ATs have regarding PLI. **Results:** The questionnaire revealed that 86.4% (n=57) of the participants did per diem work at least once per year. Of those who participated in per diem work, 29.8% (n=17) stated they did not have PLI. The questionnaire also revealed that only 46.8% (n=29) of the participants reported always having a physician who oversees them and knows they are working a per diem event. In addition, only 22.6% (n=14) of the participants reported always having a written contract that delineates their responsibilities for a per diem event. **Conclusion:** Many ATs self-reported athletic training practices that are in violation of the Board of Certification (BOC) Standards of Professional Practice and in violation of state practice

acts by working without physician oversight and without PLI during per diem and volunteer events. In addition, many ATs are practicing with suboptimal business standards by working per diem and volunteer events without a contract that delineates responsibilities or pay. ATs must understand the situations where they are in violation of the BOC Standards of Professional Practice, their state acts, and situations where they are putting themselves at risk. ATs should ensure they have privately purchased adequate PLI any time they provide care outside their main employment job description, such as when they work per diem or volunteer as an AT. If an AT provides athletic training services without PLI they are ultimately exposing their personal assets and financial stability if a malpractice claim is made against them.

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## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>CHAPTER ONE: INTRODUCTION</b> .....  | <b>1</b>  |
| <b>CHAPTER TWO: REVIEW OF LITERATURE</b> .....  | <b>4</b>  |
| <b>The Profession of Athletic Training</b> .....  | <b>4</b>  |
| What is an Athletic Trainer? .....  | 4         |
| The Education and Certification Process .....   | 7         |
| State Regulation and Scope of Practice .....  | 8         |
| Practice Standards .....  | 8         |
| Professional Organizations .....  | 9         |
| Employment .....  | 10        |
| <b>Liability &amp; Malpractice</b> .....  | <b>11</b> |
| Liability, Tort, and Malpractice .....  | 11        |
| Standard of Care .....  | 12        |
| Negligence .....  | 12        |
| <b>Protection Against a Malpractice Claim</b> .....   | <b>13</b> |
| Professional Liability Insurance .....  | 13        |
| <b>CHAPTER THREE: METHODS</b> .....   | <b>14</b> |
| <b>Participants and Recruitment</b> .....   | <b>14</b> |
| <b>Questionnaire Design</b> .....   | <b>14</b> |
| <b>CHAPTER FOUR: RESULTS</b> .....  | <b>15</b> |
| <b>Response</b> .....   | <b>15</b> |
| <b>Demographics</b> .....   | <b>15</b> |
| <b>Credentialing, Education, and Employment</b> .....                                       | <b>15</b> |
| <b>Per Diem and Volunteer Activities</b> .....  | <b>16</b> |
| <b>Professional Liability Insurance</b> .....   | <b>16</b> |
| <b>PLI Business Practice</b> .....  | <b>17</b> |
| <b>Confidence with PLI</b> .....  | <b>17</b> |
| <b>CHAPTER FIVE: DISCUSSION</b> .....   | <b>18</b> |
| <b>Compliance with BOC Standards of Professional Practice and State Practice Acts</b> ..... | <b>18</b> |
| <b>Understanding PLI Scope and Limitations</b> .....  | <b>19</b> |
| <b>Difficulties of Per Diem Work</b> .....  | <b>21</b> |
| Lack of Relationships and Rapport.....  | 21        |
| Unclear Job Responsibilities.....   | 22        |
| Documentation Challenges .....  | 22        |

|                                       |           |
|---------------------------------------|-----------|
| <b>Best Practices</b> .....           | <b>24</b> |
| <b>Limitations</b> .....              | <b>25</b> |
| <b>Proposed Future Studies</b> .....  | <b>25</b> |
| <b>CHAPTER SIX: CONCLUSIONS</b> ..... | <b>27</b> |
| <b>REFERENCES</b> .....               | <b>29</b> |
| <b>FIGURES</b> .....                  | <b>33</b> |
| <b>APPENDIX A</b> .....               | <b>45</b> |

## CHAPTER ONE: INTRODUCTION

ATs are healthcare professionals who collaborate with physicians to provide preventative services, emergency medical care, clinical diagnosis, therapeutic interventions, and rehabilitation of injuries and medical conditions.<sup>1,2</sup> Most ATs are employed by colleges, universities, secondary schools, or outpatient rehabilitation clinics.<sup>3</sup> Many ATs also work additional events not required by their primary job contract (e.g. sports camps, tournaments, competitions) to supplement their income. This is referred to as working per diem. Per diem typically means the AT is working as an independent contractor and is not working in affiliation with their main employer. Per diem literally means “for each day” in Latin.<sup>4</sup> ATs who work per diem are contracted for short-term work and are usually paid on an hourly or flat rate fee.

Irrespective of the method ATs become employed, when an AT is contracted to provide services, they assume liability for the care they provide to participants.<sup>5</sup> Malpractice occurs when a healthcare provider fails to administer appropriate care for their patient and their negligence leads to injury, harm, or death.<sup>6</sup> ATs are responsible for the care they provide at all times, and a malpractice claim may be filed regardless of whether the AT actually made any errors. Defense against a claim may mean financial ruin if the AT does not have active PLI.

PLI is a type of insurance that protects healthcare professionals from bearing the entire cost of defending a malpractice claim made by a former or current patient.<sup>7</sup> Malpractice claim expenses may include items such as medical bills, attorney fees, court costs, settlement costs, medical damages, and any other damages for which the AT was held liable.<sup>8</sup> The type of expenses and the total amount the insurance company will cover depends on the policy the AT



purchased before the incident occurred. An AT can pay a higher premium in order to obtain more PLI coverage.

Having PLI protects both the AT and the patient if an adverse event occurs. In the event the AT is found liable for an injury, the AT's personal financial assets are protected, and the patient can use the awarded money to obtain medical care (if needed). In a Sports Medicine Legal Digest article released in Spring of 2017, a family aimed to sue their child's school district, head football coach, hospital system, AT, and three insurance companies for 20 million dollars.<sup>9</sup> The family claimed the AT neglected to diagnose a concussion and that the missed diagnosis resulted in irreparable neurological damage to the athlete.<sup>9</sup> It is unclear if the AT's actions in that case met the standard of care, but it is clear that being personally responsible to pay for the legal defense would be costly. If found negligent, the payment for damages would likely mean financial ruin for the AT. In addition, if the AT was found negligent, but lacked PLI, the claimant may not be adequately compensated for expenses related to their medical care.

Although ATs typically have PLI provided through their main employer, it is important that ATs understand that PLI provided through their main employment does not typically extend to services they provide that are not part of that contract, such as when they are working per diem.<sup>10</sup> As an example, an AT employed by a secondary school might choose to provide independently contracted per diem athletic training services to a sports camp during the summer. The PLI associated with their secondary school employment is not likely to cover them for liability associated with that sports camp. Secondary school ATs generally have weekends and summers off of work. This allows secondary school ATs to take part in per diem work opportunities that take place during the weekends and/or summers more readily than an AT that

works in any other setting that does not have weekends and/or summers off. The AT would need to understand why privately purchasing individual PLI for this type of work is vital. Without adequate PLI coverage for per diem work, the AT would be left to solely defend a malpractice claim made against them by a patient. This could lead to tarnishing the ATs financial stability.

The BOC Standards of Professional Practice/ Code of Professional Responsibility (Version 3.1) states that ATs must maintain “adequate and customary professional liability insurance.”<sup>11</sup> The Professional Development and Responsibility (PD) competencies in the current Athletic Training Education Competencies (5<sup>th</sup> Edition) require that graduating students can access and analyze the BOC Standards of Professional Practice, which includes the Code of Professional Responsibility, but does not specifically require athletic training programs to instruct about PLI.<sup>12</sup> These competencies are set by the Commission on Accreditation of Athletic Training Education (CAATE) and are in effect until July 1, 2020.

The National Athletic Trainers’ Association (NATA) has emphasized the importance of PLI through their Risk and Liability webpage, Best Practices for Per Diem Work Guide, and Sports Medicine Legal Digest quarterly newsletter.<sup>5</sup> However, it is still unclear if ATs understand the importance of PLI.

The purpose of this study is to establish secondary school ATs level of knowledge about PLI. Specifically, the study will examine their knowledge of terminology, importance of having PLI, and situations where they remain unprotected. I hypothesize that most ATs are not aware of the importance of PLI and do not implement the use of correct PLI in their clinical practice.

## CHAPTER TWO: REVIEW OF LITERATURE

### The Profession of Athletic Training

#### *What is an Athletic Trainer?*

ATs are qualified, highly skilled healthcare professionals who provide healthcare services to a physically active population of patients.<sup>1,2</sup> ATs are required to work in collaboration with a physician to provide healthcare services to the population they are serving, and the profession delineates five domains of athletic training. The five domains of athletic training include: injury and illness prevention and wellness promotion; examination assessment and diagnosis; immediate and emergency care; therapeutic intervention; and healthcare administration and professional responsibility.<sup>13</sup> Athletic training is recognized as an allied healthcare profession by the American Medical Association (AMA), Health Resources Services Administration (HRSA) and the Department of Health and Human Services (HHS).<sup>2</sup>

The first domain of athletic training is Injury and Illness Prevention and Wellness Promotion.<sup>13</sup> This domain is defined as “promoting healthy lifestyle behaviors with effective education and communication to enhance wellness and minimize the risk of injury and illness.”<sup>13</sup> Athletic training knowledge in this domain is outlined by risk management and promoting healthy lifestyle behaviors. Risk management topics include identifying risk (e.g. preparticipation examinations, injury surveillance), implementing policies and procedures to reduce risk, educating patients about proper use and safety of personal equipment (e.g. proper helmet fitting), complying with laws and regulations, and monitoring/responding to dangerous environmental conditions (e.g. lightning).<sup>13</sup>

The second domain of athletic training is Examination, Assessment and Diagnosis.<sup>13</sup> This domain is defined as “implementing systematic evidence-based examinations and assessments to formulate valid clinical diagnoses and determine patients’ plan of care.”<sup>13</sup> Athletic training knowledge in this domain is outlined by understanding injury and illness pathology and using evidence-based medicine to form clinical diagnosis.<sup>13</sup> Tasks in this domain include obtaining thorough medical history from the patient (e.g. obtaining history through observation and review of medical records), recognizing specific characteristics of various injuries and illness, and formulating clinical diagnosis based on the examination. This domain also specifies the AT must also have knowledge in educating the patient about clinical findings and implementing a plan of care to optimize outcomes and compliance.<sup>13</sup>

The third domain of athletic training is Immediate and Emergency Care.<sup>13</sup> This domain is defined as “integrating best practices in immediate and emergency care for optimal outcomes.”<sup>13</sup> Athletic training knowledge in this domain is outlined as planning for and responding to unpredictable emergency situations, establishing emergency action plans to optimize outcomes, determining if injury is life or limb threatening, implementing appropriate emergency care procedures (e.g. CPR, AED), and implementing referral strategies to facilitate efficient transfer of care. The AT must also have knowledge in medical conditions that may become medical emergencies (e.g. asthma, sickle cell trait, hypertension, diabetes) and dangerous environmental conditions (e.g. lightning, extreme cold) and respond to such conditions with evidence-based medicine to optimize outcomes.<sup>13</sup>

The fourth domain of athletic training is Therapeutic Intervention.<sup>13</sup> This domain is defined as “rehabilitating and reconditioning injuries, illnesses and general medical conditions

with the goal of achieving optimal activity level based on core concepts (i.e., knowledge and skill sets fundamental to all aspects of therapeutic interventions) using the application of therapeutic exercise, modality devices and manual techniques."<sup>13</sup> Athletic training knowledge in this domain is outlined as restoration of the patient to an optimal level through the application of currently acceptable rehabilitation techniques, progressing a patient through treatment, and forming a plan of care to return the patient to optimal function.<sup>13</sup> The AT must also have knowledge in administering therapeutic devices (e.g. orthotics, braces), administering manual techniques (e.g. joint mobilizations, massage) and providing therapeutic intervention for general medical conditions.<sup>13</sup>

The fifth domain of athletic training is Healthcare Administration and Professional Responsibility.<sup>13</sup> This domain is defined as “integrating best practices in policy construction and implementation, documentation and basic business practices to promote optimal patient care and employee well-being.”<sup>13</sup> Athletic training knowledge in this domain is outlined as working within a patient-centered sports medicine team with other allied healthcare professionals and implementing best-practice business standards. Implementing best-practice business standards is outlined as developing policies, procedures and strategies specific to the facility needs, abiding by local and state legislation that governs athletic training, professional development through continuing education, and using documentation to ensure best-practice standards.<sup>13</sup> The AT must be aware they are a critical part of the sports medicine team and they should continually practice with high professional standards.<sup>13</sup>

### *The Education and Certification Process*

The CAATE is a not-for-profit organization whose mission is to define, assess and improve athletic training education.<sup>14</sup> This organization sets standards required to obtain and maintain recognition as a CAATE-accredited professional athletic training program.<sup>15</sup> The current Athletic Training Education Competencies (5<sup>th</sup> ed.) contains the knowledge and skills that athletic training programs are required to instruct and assess.<sup>12</sup> The Competencies will be replaced on July 1, 2020 when the new CAATE 2020 Standards for Accreditation of Professional Athletic Training Programs (Curricular Content Standards) are required.<sup>16</sup> The CAATE also encourages all athletic training programs have values of accountability, integrity, and leadership incorporated into their curriculum.<sup>14</sup> To become an AT, all students are required to obtain their education through a CAATE accredited program and pass the BOC Examination.<sup>17</sup>

The BOC is a not-for-profit credentialing agency that provides certification requirements for entry-level ATs.<sup>18</sup> The mission of the BOC is to protect the public by providing exceptional credentialing programs for ATs.<sup>18</sup> The BOC sets standards for credentialing ATs and also outlines continuing education requirements for BOC certified ATs.<sup>18</sup> The BOC collaborates with state regulatory agencies to establish credential information, guidelines for professional conduct, and provides regulatory standards for certification issues.<sup>18</sup> In order to sit for the BOC examination and ultimately obtain BOC certification, candidates must have graduated from a CAATE accredited professional athletic training program.

### ***State Regulation and Scope of Practice***

The scope of practice for an AT is set by the regulatory statutes governing professional practice in individual states.<sup>1</sup> Regulation statutes vary from state to state and it is vital that every AT is familiar with the rules and regulations for the specific state they desire to practice in.<sup>1</sup> Licensure, certification, registration, and exemption are all types of state regulation.<sup>1</sup> Candidates must also comply with their specific local and state rules and regulations, including state credentialing.<sup>17</sup> State credentialing may require the AT to complete a background check and demonstrate CPR certification.<sup>17</sup>

The scope of practice is also set by standing orders or protocols prescribed by the physician working with the AT.<sup>1,19</sup> Standing orders or protocols outline the specific skills the AT is allowed to perform in specific situations and must always fall within the scope of practice for the state.<sup>19</sup> For example, in a state that allows reduction of appendicular joint dislocations, a physician has the ability to allow an AT to perform that skill under the conditions outlined in the standing order/protocol.

### ***Practice Standards***

The BOC Standards of Professional Practice is a document that outlines the minimum standards all ATs must adhere to.<sup>11</sup> In addition, the NATA has a separate document, the NATA Code of Ethics, that outlines the ethical standards all ATs should implement in their practice.<sup>20</sup> The NATA Code of Ethics is meant to outline and bring awareness to the high standards that ATs should strive to adhere to in order to maintain professionalism in the athletic training profession.<sup>20</sup> These documents state that all ATs should conduct themselves in a manner

that respects the rights and welfare of others; this not only includes providing adequate medical care but also adhering to sensible business practices such as maintaining appropriate PLI.<sup>11,20</sup>

Code 6: Business Practices in the BOC Standards of Professional Practice / Code of Professional Responsibility (Version 3.1) states that ATs should maintain “adequate and customary professional liability insurance.”<sup>11</sup> Maintaining appropriate PLI is considered an essential duty and obligation that should be recognized by every AT.

The Professional Development and Responsibility (PD) competencies in the current Athletic Training Education Competencies (5<sup>th</sup> Edition) require that graduating students can access and analyze the BOC Standards of Professional Practice, which includes the Code of Professional Responsibility.<sup>12</sup> However, the Professional Development and Responsibility competencies do not specifically require athletic training programs to instruct about PLI.<sup>12</sup> The Competencies will be replaced by the 2020 Standards for Accreditation of Athletic Training Programs on July 1, 2020. A subsection in the 2020 Standards is the Curricular Content Standards; the Curricular Content Standards also do not require specific instruction about PLI, but does state that graduates must be able to identify and mitigate “sources of risk to the individual, the organization, and the community.”<sup>16</sup>

### ***Professional Organizations***

The NATA is the primary professional membership organization for certified ATs and those who support athletic training as a profession.<sup>21</sup> The goal of the NATA is to encourage professional growth and development of athletic training as an allied healthcare profession and ATs as healthcare professionals.<sup>21</sup> The NATA has published position statements and consensus statements, as well as best practice guidelines for specific topics of interest to ATs. For example,



the NATA has published a Best Practice Guidelines for Per Diem work and the Sports Medicine legal digest. The NATA has also proposed a strategic plan for ATs to be recognized as vital healthcare providers and considered an integral part of healthcare.<sup>22</sup> The strategic plan represents the mission of the NATA, which is continued growth and development of athletic training as a profession through advocacy, engagement, and professional development.<sup>22</sup> The NATA is also a provider of BOC approved continuing education units (CEs), which are required to maintain certification.

ATs are encouraged, but not required to join the NATA. ATs who decide not to join the NATA may be left in the dark about current knowledge regarding legal issues and PLI regarding athletic training. ATs who join the NATA automatically gain membership into their district and state professional organizations. For example, if an AT practices in Florida and becomes a member of the NATA, they automatically join the Southeast Athletic Trainers' Association (SEATA) and the Athletic Trainers' Association of Florida (ATAF) as well.

The American College of Sports Medicine (ACSM) is an organization comprised of certified health care professionals in the field of sports medicine (e.g. students, personal trainers, physicians, associates of sports medicine, and health and fitness professionals) who are dedicated to advancing health through science, education, and medicine.<sup>23,24</sup> The ACSM also publishes recent developments in sports medicine and offers CEs to ATs. The ACSM is helpful to ATs because this organization helps guide best evidence-based practices for ATs.

### ***Employment***

Today, employment settings for ATs are more diverse compared to when the profession first began. Most ATs work in the college/university, secondary school, or clinical practice

setting. Other settings that employ ATs are professional sports, performing arts, public safety, military, and occupational health.<sup>3</sup> Other less common settings ATs may choose to work in include industrial and health club settings.<sup>1,3</sup> ATs working in the university/college setting may be assigned a specific team or teams they provide athletic health care services to. ATs working in the secondary school setting may also teach at the school they provide health care services to. ATs that work in the hospital/clinical setting may provide health care services in a hospital or outpatient rehabilitation clinic.<sup>3</sup>

In each employment setting, the AT may choose to work full-time or part-time. The AT may also choose to volunteer their time under specific circumstances, such as for a community 5K or charity athletic event. Many ATs will choose to work additional events or tournaments on a per diem basis as a way to supplement their salary with additional income. The NATA conducted a salary survey of ATs in 2018 which revealed the average salary for high school ATs that work full-time is between \$52,868 and \$58,603.<sup>25</sup>

## **Liability & Malpractice**

### ***Liability, Tort, and Malpractice***

Liability is “being legally responsible for the harm caused to another person.”<sup>1,26</sup> ATs should understand that they assume liability for all health care services they provide, and the associated risk of a malpractice claim being filed against them.<sup>1,26</sup> A tort is “a legal wrong other than a breach of contract for which a remedy will be provided, usually in the form of monetary damages.”<sup>26</sup> All ATs are expected to provide care without injuring others.<sup>1</sup> The AT may be expected to fix any damages to a patient by paying money if there is some amount of intentional

or unintentional harm to the patient.<sup>1</sup> When a tort occurs in the professional practice of healthcare, it is referred to as a malpractice tort or a malpractice claim.

For example, if a secondary school AT is assigned to care for a team, they assume liability for that team and all participants. State laws and professional position statements have clearly determined that returning an athlete to participation despite clear signs and symptoms of concussion is unsafe. If this secondary school AT returns a concussed athlete to participation, they can be held liable for their poor judgement. The parent of the child may accuse the AT of malpractice and the courts will have an opportunity to evaluate the claim.

### ***Standard of Care***

The standard of care is “the legal duty to provide health care services consistent with what other health care practitioners of the same training, education, and credentialing would provide under the same or similar circumstances.”<sup>26</sup> The standard of care will be determined by the court when the malpractice claim is presented. Various sources of credible information (e.g. NATA position statements, NATA consensus statements, educational materials, expert witnesses) will determine if an ATs actions met or fell below the standard of care. All ATs are legally required to perform at or above the standard of care for the practice of athletic training.<sup>1,26</sup> In the above example, returning the athlete to participation despite clear signs and symptoms of a concussion would be considered below the standard of care because it would not be something a reasonably prudent AT would do.

### ***Negligence***

Negligence is “a type of tort in which an athletic trainer fails to act as a reasonably prudent athletic trainer would act under the same or similar circumstances.”<sup>26</sup> There are five

things the law will examine in a case of alleged negligence. First, the law will determine if the AT was at all related to the case. Second, the law will determine whether the AT had a duty to act. Third, the law will determine if the AT breached their duty to act. Fourth, the law will determine if the ATs action (or inaction) was the actual or proximate cause of the alleged damage. Fifth, the law will determine if the ATs action (or inaction) caused actual damage to the patient.<sup>26</sup>

## **Protection Against a Malpractice Claim**

### ***Professional Liability Insurance***

PLI is a type of insurance that protects healthcare professionals from bearing the entire cost of a malpractice claim made by a current or former patient.<sup>1,7</sup> PLI may cover a patient's medical bills, attorney fees, court costs, settlement costs, and any other medical damages to the patient the AT was responsible for.<sup>8</sup> Most PLI policies will not cover intentional harm, sexual misconduct, or criminal act claims made against any healthcare provider.<sup>1,8,26</sup> The type of expenses and total amount the insurance company will cover depends on the policy purchased before the incident occurred. Greater or more expanded liability coverage will result in a higher premium.

ATs may have PLI provided to them by their main employer and/or they may personally purchase PLI from an insurance provider. PLI provided by an employer covers liability associated with that job. The policy typically only covers services outlined in the job description and will not likely cover any services the AT performed outside of their job description.<sup>10</sup> PLI that is purchased privately may cost an average of \$110-\$530 per year depending on the individual AT and the coverage they request for the policy.<sup>10</sup>

## **CHAPTER THREE: METHODS**

### **Participants and Recruitment**

Participants were recruited through Facebook.com. The questionnaire was posted to a Facebook group whose 8,000 members were mainly ATs who worked in the secondary school setting. Data was collected using an online questionnaire, Qualtrics.com 2002 (Provo, UT). Participants were provided two reminders over the course of a month. To be included, the participants were required to be ATs practicing in the secondary school setting. Participation in this study was contingent upon access to a reliable computer, laptop, tablet, or mobile device that had a reliable connection to internet to access the questionnaire on Qualtrics.com. The questionnaire is provided as Appendix A.

### **Questionnaire Design**

The 17-item questionnaire contained 10 multiple choice questions, 3 “select all that apply” questions, 2 Likert question sets, and 2 “fill in the blank” questions, and “smart questions”. The “smart questions” provided more questions/options based on the answers previously chosen. Participants reported demographic information regarding age, gender, education/degree, and state. Participants were not asked to report their name, race/ethnicity, socioeconomic status, date of birth, or any other personal or identifying information.

### **Statistical Analysis**

Descriptive statistics including the average behaviors ATs adhere to regarding PLI and level of knowledge about the legal risks regarding per diem and volunteer work were calculated using Microsoft Excel, Microsoft Office 2002 (Redmond, WA).

## **CHAPTER FOUR: RESULTS**

### **Response**

Eighty-four participants responded to the questionnaire (n=84). Of the 84 responses, 18 were excluded because they did not complete portions of the questionnaire. The remaining (n=66) were analyzed.

### **Demographics**

Participants were asked about their gender and age and 66 participants responded. The questionnaire revealed that 63.3% (n=42) were “female,” 34.8% (n=23) were “male,” and 1.5% (n=1) reported “other.” The questionnaire revealed that most (43.9%, n=29) were “18-30 years old.” Participants were asked about the state that they work in and 65 participants reported working in 27 different states. Complete demographic information can be found in Figures 1-3.

### **Credentialing, Education, and Employment**

Participants were asked about their credentialing, education and employment and 66 participants responded. The questionnaire revealed that most (27.3%, n=18) became a certified AT between “2016-2019.” The questionnaire revealed that most (86.4%, n=57) completed their athletic training education requirements during their “bachelor’s degree.” The questionnaire revealed that most (50.0%, n=33) earned a “master’s degree.” The questionnaire revealed that most (42.4%, n=28) were “employed full-time by hospital/outpatient clinic with the majority of hours assigned to the secondary school.” Complete credentialing, education, and employment information can be found in Figures 4-7.

### **Per Diem and Volunteer Activities**

Participants were asked if “they have ever used a per diem connecting website that links ATs to per diem work (e.g. Go4Ellis.com)” and 66 participants responded. Most (78.8%, n=52) stated “yes,” and 21.2% (n=14) stated “no.”

Participants were asked if they complete per diem work or volunteer activities and 66 participants responded. The questionnaire revealed that most (86.4%, n=57) “complete per diem work.” Of the participants that complete per diem work, most (64.9%, n=37) complete per diem work “infrequently (1-4x/year)” and the most common type of per diem work completed was “tournaments and competitions.” The questionnaire revealed that most (59.1%, n=39) complete “volunteer activities.” Of the participants that complete volunteer activities most (76.9%, n=30) complete volunteer activities “infrequently (1-4x/year)” and the most common type of volunteer activity completed was “races (5K, 10K, 1/2 marathon, marathon).” Complete per diem and volunteer activity information can be found in Figures 8-13.

### **Professional Liability Insurance**

Participants were asked if they currently have PLI and 66 participants responded. Many participants 36.4%, (n=24) stated “no” and 63.6% (n=42) stated “yes.” The questionnaire revealed that 29.8% (n=17) of the participants who do per diem work did not have active PLI at the time they took the questionnaire. Of the 17 participants that stated they do not have PLI, most (52.9%, n=9) state they do not have it because they are “covered by their employer.”

Participants were asked if they “recall learning about PLI in any of the following settings” and 64 participants responded with 112 responses. Of the 112 responses, most (39.3%,

n=44) stated they learned about PLI through “conversations with other ATs.” Complete information about professional liability insurance can be found in Figures 14-15.

### **PLI Business Practice**

Participants were asked about their PLI business practices and presented a Likert scale. An average of 62.25 participants responded to every question statement. The complete Likert scale results can be found in Figure 16.

### **Confidence with PLI**

Participants were asked about their confidence with PLI and presented a Likert scale. An average of 65 participants responded to every statement. The complete Likert scale results can be found in Figure 17.



## **CHAPTER FIVE: DISCUSSION**

### **Compliance with BOC Standards of Professional Practice and State Practice Acts**

The BOC Standards of Professional Practice exists to establish the “essential duties and obligations imposed by virtue of holding the ATC credential.”<sup>11</sup> Compliance with the BOC Standards of Professional Practice is mandatory in order to remain in good standing as a certified AT. Code 6.3 states that “the athletic trainer or applicant: maintains adequate and customary professional liability insurance.”<sup>11</sup> The questionnaire revealed that 29.8% (n=17) of the participants who do per diem work did not have active PLI at the time they took the questionnaire. Some of the participants who stated they did not have active PLI stated that they only provided services as a first aid responder, or they did not think it was necessary. This false sense of security leads ATs to not purchasing their own PLI. Some participants that stated they did not have active PLI stated they do not have the financial means to purchase it. Because the financial penalty from litigation is far greater than the PLI premium, it would be wise for an AT to either do enough per diem work to pay for the PLI or do not do PLI at all.<sup>9</sup> These reasons for not purchasing PLI are concerning because completing per diem work without adequate and customary PLI is legally risky and is a violation of the BOC Standards of Professional Practice.<sup>11</sup> The AT should ensure they purchase their own PLI to protect themselves in the event of an adverse event that results in litigation as required by the BOC Standards of Professional Practice.<sup>11</sup>

Standard 1 of the BOC Standards of Professional Practice states “the athletic trainer renders service or treatment under the direction of, or in collaboration with a physician, in accordance with their training and the state’s statutes, rules and regulations.”<sup>11</sup> In most states

practicing without physician oversight is illegal. For example, in Florida ATs are legally required to “report new and recurring injuries or conditions to a physician in a manner requested by the physician.”<sup>27</sup> The results of this study concluded that only 46.8% (n=29) of secondary school ATs who responded always have a physician that oversees them and knows they are working a per diem event. This behavior is in direct violation of most state laws and the BOC Standards of Professional Practice.<sup>11</sup> In addition to the potential legal consequences, any work done in violation of the law will not likely be covered by PLI. PLI policies require that the policyholder act within the law. All ATs should strive to practice athletic training in a way that mitigates and minimizes legal risks, the best way to do this is by practicing in accordance with state laws, rules, and regulations.<sup>28</sup>

### **Understanding PLI Scope and Limitations**

Although the secondary school settings generally provide PLI for the duties of the job description, that PLI will not likely cover services provided that are outside those duties. The questionnaire revealed that 30.3% (n=19) of the ATs that participate in per diem work have neutral or less than neutral confidence in knowing what type of PLI to purchase for the per diem work they do on an annual basis. The questionnaire also revealed that 29.2% (n=19) have neutral or less than neutral confidence with the rules and expectations of the PLI they purchased for the per diem work that they do. These findings indicate that on average, about 1/3 of ATs are potentially participating in per diem work without proper PLI coverage because they may be under the assumption they are protected. Ensuring appropriate PLI coverage is always the responsibility of the AT and realizing one lacked appropriate coverage after a claim has already been filed could be financially devastating.

ATs also need to understand that being included in their main employer's PLI policy usually only covers the health care services they provide for that employer. In this case, an AT who completes per diem work without their own PLI policy is practicing completely unprotected by liability insurance. In addition, even within the confines of the ATs main employment, there can also be situations where they are not covered. PLI policies provided by an ATs main employer may have gaps in coverage they may not be aware of. For example, PLI policies provided by secondary schools generally specify who the AT may provide health care services to (e.g. athletes). If an AT with this type of policy provided health care services to a band member, coach, or spectator, they would not be protected from a malpractice claim because those types of patients were not included in the policy.

The NATA is continually pushing more information about PLI for ATs. The fall 2019 issue of the Sports Medicine Legal Digest has an article that explains ATs should be aware if there is a lack of coverage with any specific situations they may be unprotected and seek a personal PLI policy for those situations.<sup>29</sup> In addition, the NATA has recognized many ATs may be putting themselves at risk with certain work and developed the NATA Risk and Liability Toolkit as a way to determine the amount of risk and liability associated with specific athletic training job setting.<sup>30</sup> The Toolkit is used to gather background information to assist the AT, their employer, supervisor, risk manager, and possible legal counsel in determining risk associated with liability.<sup>30</sup> The document is then used as a resource for determining the amount of PLI an AT may need for the specific work they do.<sup>30</sup> This assessment tool may also be used to determine if there are any gaps in coverage with the ATs main employer insurance policy.<sup>5</sup> This document specifies if an AT volunteers or works in different capacities, the AT will need to

complete the assessment with every event to determine coverage and risk for that specific event.<sup>30</sup> The Toolkit should be used as a guide that aids ATs in understanding the risks associated with their specific events and how an insurance policy may cover any adverse situations.<sup>30</sup>

### **Difficulties of Per Diem Work**

Per diem work presents challenges that traditional athletic training employment does not. These challenges increase the ATs risk of a malpractice claim and make it more difficult for an AT to defend a malpractice claim.

#### ***Lack of Relationships and Rapport***

ATs working per diem may have difficulty building relationships and rapport with temporary patients because per diem work is often short term; this leaves little time to establish trust and familiarity with the patient. Patients who have trust, respect, and familiarity with their healthcare provider are less likely to file a malpractice claim. They trust mistakes were not of malicious intent and do not want to push the burden of a malpractice claim against their trustworthy and respected healthcare provider.<sup>26</sup> A questionnaire of roughly 4,000 physicians published by MedScape.com found that 55% of those that took the questionnaire have been named in a malpractice suit at least once in their career.<sup>31</sup> Of the 4,000 physicians 53% stated one of the best ways to avoid a lawsuit was to “have better communication and rapport with patients.”<sup>31</sup> An AT who works per diem may be serving a large volume of patients that changes with every new per diem opportunity. This makes building a working relationship difficult since establishing trust and familiarity requires time. It is possible that the lack of relationships and

rapport with patients puts ATs at a greater risk of malpractice claim every time they work per diem.

### ***Unclear Job Responsibilities***

One of the pitfalls of per diem work is the common occurrence of ATs working an event without a written contract.<sup>32</sup> Working any event without a written contract should be avoided because it leaves greater risk for being solely responsible for any possible litigation regarding the event in the future and leaves no way to ensure payment after the event.<sup>32</sup> This study concluded that only 40.3% (n=25) of secondary school ATs “always have a written contract in place that delineates their pay.” Anecdotal evidence suggests this type of behavior may be linked with being paid under the table and leaves no paper trail connecting the employer to the AT, which ultimately leaves the AT at a greater risk of being solely responsible for defending a malpractice claim. Per diem job responsibilities are often less clear, and regularly offer little clarification on the specific duties expected of the AT. This study concluded that only 22.6% (n=14) of secondary school ATs “always have a written contract in place that delineates their responsibilities.” This is concerning because lack of a contract means lack of clarity about what the employer is expecting, and therefore, what the PLI is insuring.

### ***Documentation Challenges***

Thorough documentation is more difficult because per diem work is often disorganized and lacks access to office space. Per diem work is typically done all day in various open locations (e.g. multiple athletic fields, large convention centers) with little or no downtime. This makes it difficult to thoroughly document interactions with patients. The spring 2020 issue of the Sports Medicine Legal Digest has an article that explains thorough documentation is vital

because it may guide future clinical decisions and provides accurate information if legal action is taken against the AT.<sup>33</sup> The per diem setting also typically lacks access to an electronic medical records system (EMR) or even standardized documentation forms/templates.

The AT will not normally have access to a proper medical history for those participating in the per diem event and certifying that a preparticipation examination was done is not often possible. The results of this study found that 0% (n=0) of secondary school ATs “always have access to the participants medical history and medication use.” This could cause complications with the care provided by the AT. Per diem events generally lack pre-participation examination (PPE) results for every participant. This increases the likelihood a participant has a serious underlying medical condition that the AT will have to handle. Per diem events also generally lack medical history for each participant which is less than ideal because medical history often guides the AT in decision making for specific health care services the participant may need.

In many cases, per diem work is done outside without an office or desk while exposed to the elements, meaning the AT may not be able to document anything until hours after the event. This is less than ideal because documentation is best done as quickly as possible after an interaction with a patient. The possibility of forgetting or misremembering the specifics of any interaction with a patient interaction increases with a prolonged amount of time between the AT administering health care services and documenting the details of that interaction. This is concerning because it is disorganized documentation and information that is false may place the AT at a greater risk of failing to uphold testimony against real or perceived negligence.<sup>33</sup> Without proper documentation there would be no hard evidence that outlines specific interactions between the AT and patient. It is imperative all ATs understand documenting any

interaction or health care services provided to any patient is of the utmost importance. This way the AT will have a way to outline the interaction between themselves and the patient with hard evidence rather than recalling the interaction from memory which, may not match the memory of the patient. Documenting patient interactions also proves incredibly valuable when a malpractice claim is filed years after the situation has occurred.<sup>26</sup> Long term memory is unreliable; therefore, documenting is an invaluable and necessary tool the AT needs to defend against a malpractice claim.

### **Best Practices**

Although this study revealed that many ATs are practicing in violation of the BOC Standards of Profession Practice, some questions had positive responses. The questionnaire revealed that 80% (n=52) of the participants “have used a per diem connecting website that links ATs to per diem work.” This is ideal because it shows many secondary school ATs are using a credible resource that links them to per diem work through an organized platform. Go4Ellis.com requires all ATs have their own form of PLI before they work an event.<sup>34</sup> Another positive outcome the questionnaire revealed is the way in which ATs are learning about PLI. The participants were asked about the setting(s) they recall learning about PLI and about 1/2 of the responses (n=57) stated the participants learned about PLI through formal athletic training education or a continuing education event. This is ideal because it ensures ATs are learning about PLI from credible unbiased educational sources.

To ensure best practices with per diem and volunteer work the AT should begin with establishing the following: privately purchase PLI for the per diem and volunteer work they do, communicate with a trusted physician to see if they will oversee a specific per diem or volunteer

event, always have contracts in place that delineate pay and responsibilities, use a per diem connecting website as a first resource for finding per diem work, continue seeking information specific to legal issues in athletic training about PLI and per diem work such as the NATA Best Practice Guidelines for Per Diem Work and/or Sports Medicine Legal Digest.<sup>5,35</sup>

### **Limitations**

The sample size in the present study is considerably small (n=66). The questionnaire was posted to a popular secondary school ATs Facebook.com page with 8,000 members. It is impossible to calculate how many of the members were active or even saw the request. Eighty-four responded to the request but only 66 ATs' data were interpreted due to some exclusion of incomplete responses (n=18). Therefore, the participants only represent a small population of secondary school ATs. In addition, those who decided to participate may have had a specific interest in liability insurance or an overall research interest compared to those who did not complete the questionnaire.

### **Proposed Future Studies**

Further research should include the best ways for ATs to learn about PLI. This should include an attempt to assess relationships between instruction to compliance with good per diem business practices. It is important for research to determine when and how to ensure that ATs understand the risks related to per diem work and how to protect themselves. Further research should be done to assess any correlation between ATs salary and privately purchased PLI. It is important for research to determine if there is a lack of ATs privately purchasing their own PLI policies depending on their yearly income. Further research should be done to assess ATs that work in various settings and do per diem work/and or volunteer work and their level of



knowledge regarding PLI and the risks associated working per diem or as volunteer AT. Ideally this study would have a larger sample size that represents the diversity in athletic training more accurately.

## **CHAPTER SIX: CONCLUSIONS**

This questionnaire revealed that many ATs are practicing in violation of the BOC Standards of Professional Practice and in violation of state practice act requirements. According to the BOC and most state practice acts, ATs must have physician oversight, even for per diem and volunteer events. The BOC Standards of Professional Practice states that ATs must have adequate PLI. ATs should also have a contract that outlines their specific duties and pay before the event takes place. ATs practicing in violation of the law, without a contract, and/or without PLI are putting themselves at risk.

This questionnaire revealed that ATs also lack adequate knowledge and confidence with PLI. Many ATs are under the impression that the PLI provided by their main employer covers all work they do; however, this is not the case. If the AT decides to work a volunteer or per diem event, the PLI provided by their main employer typically will not cover them. The health care services they provide would be considered outside of the contract with their main employer. This business practice leaves many ATs exposed to a greater risk of being solely responsible for defending a malpractice claim. This legal risk is maximized by the challenges of per diem work; these include a lack of rapport with patients, unclear job responsibilities, and difficulty with documentation.

Many of the participants reported they have used a per diem connecting website like Go4Ellis and recall learning about PLI through their formal education and continuing education events. Best practices for per diem and volunteer work include privately purchasing PLI, having an overseeing physician for every per diem and volunteer event, having contracts in place for every per diem and volunteer event, and continually seeking more information on best practices

through documents like the NATA Best Practice Guidelines for Per Diem Work and/or the Sports Medicine Legal Digest. ATs must understand the situations where they are in violation of the BOC Standards of Professional Practice, their state acts, and situations where they are putting themselves at risk. ATs should ensure they have privately purchased adequate PLI any time they provide care outside their main employment job description, such as when they work per diem or volunteer as an AT. If an AT provides athletic training services without PLI, they are ultimately exposing their personal assets and financial stability if a malpractice claim is made against them.

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## FIGURES

Figure 1. Athletic Trainers' Gender

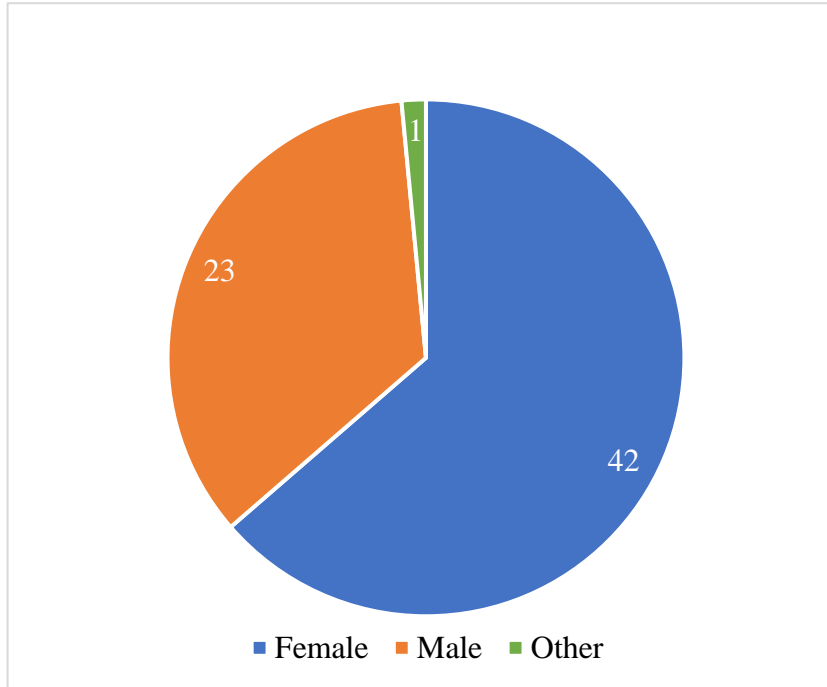
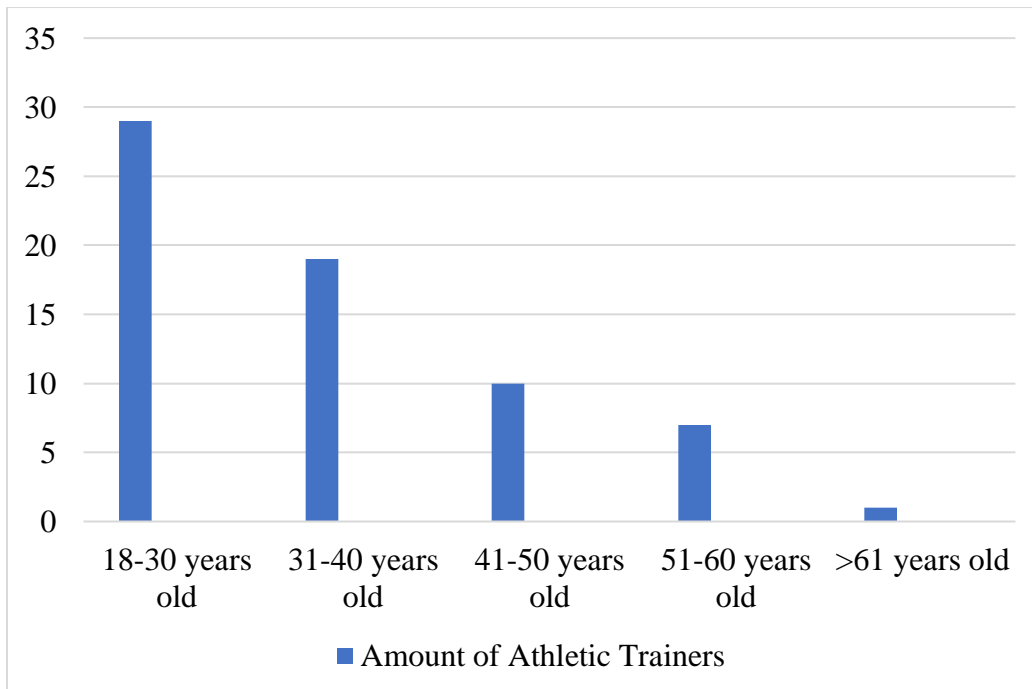
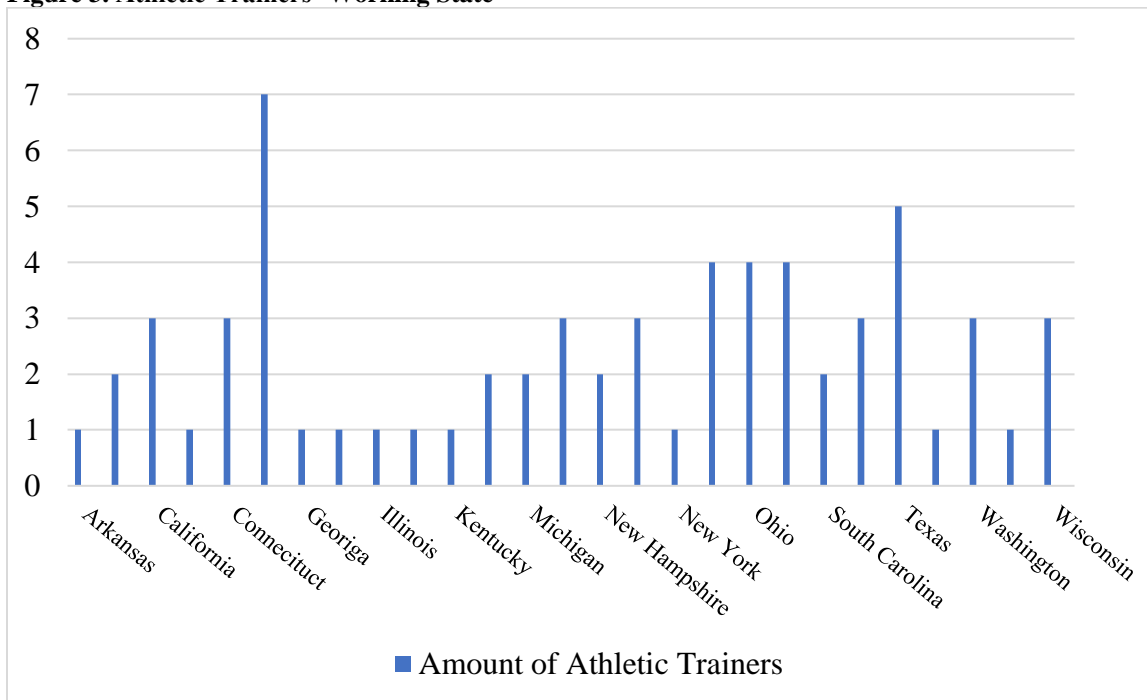


Figure 2. Athletic Trainers' Age

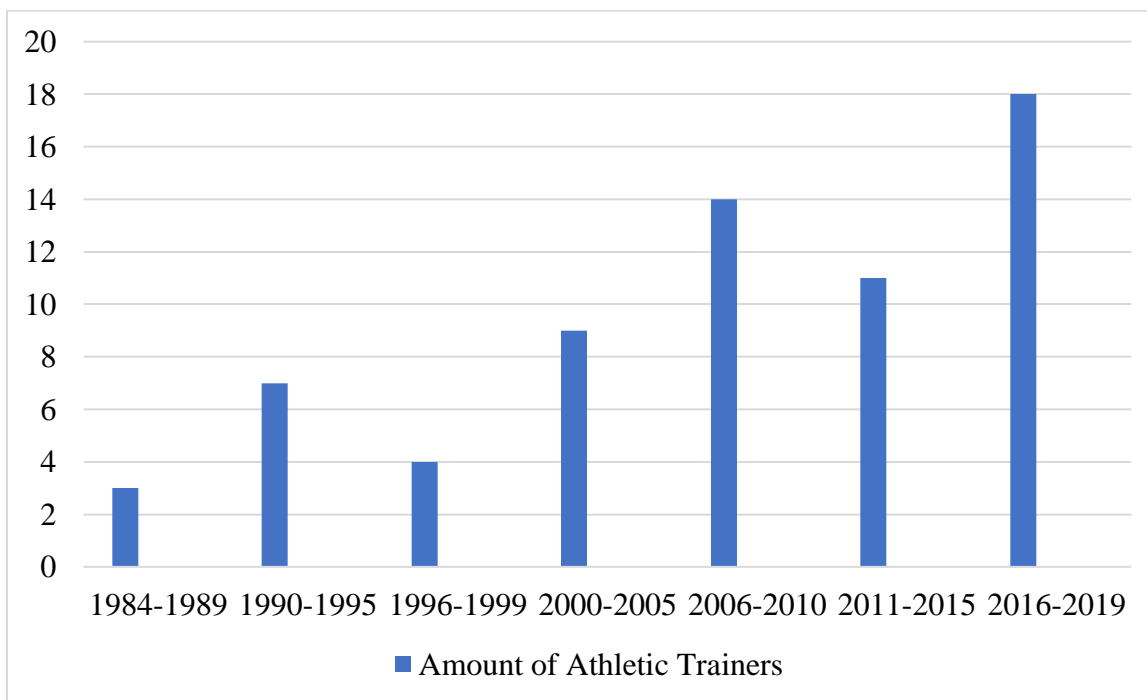




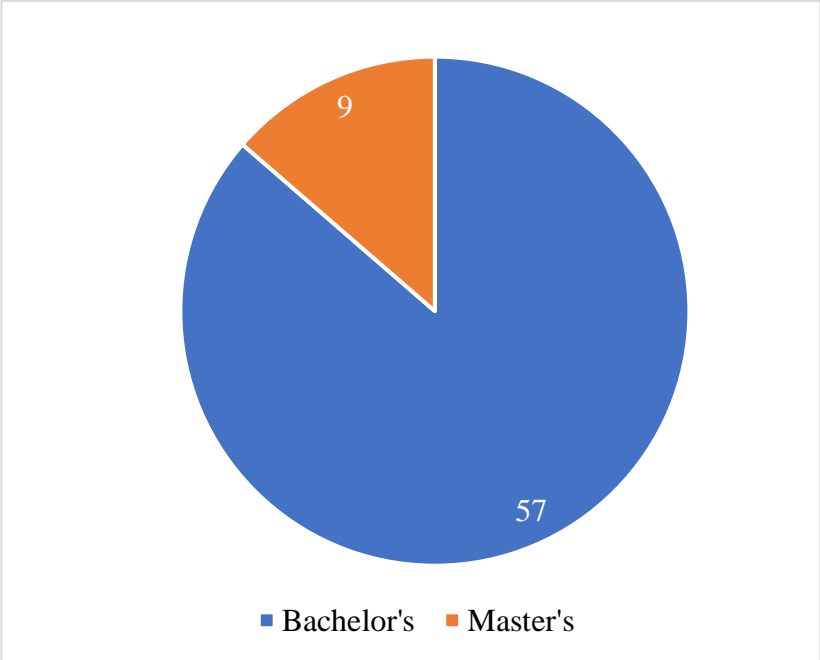
**Figure 3. Athletic Trainers' Working State**



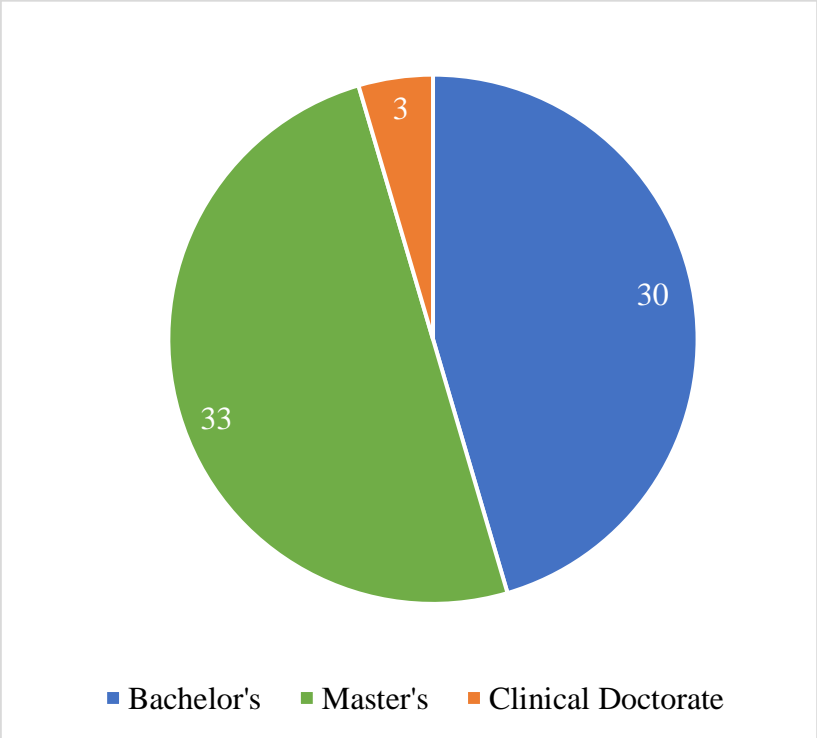
**Figure 4. Obtaining Athletic Trainer Certified Credential**



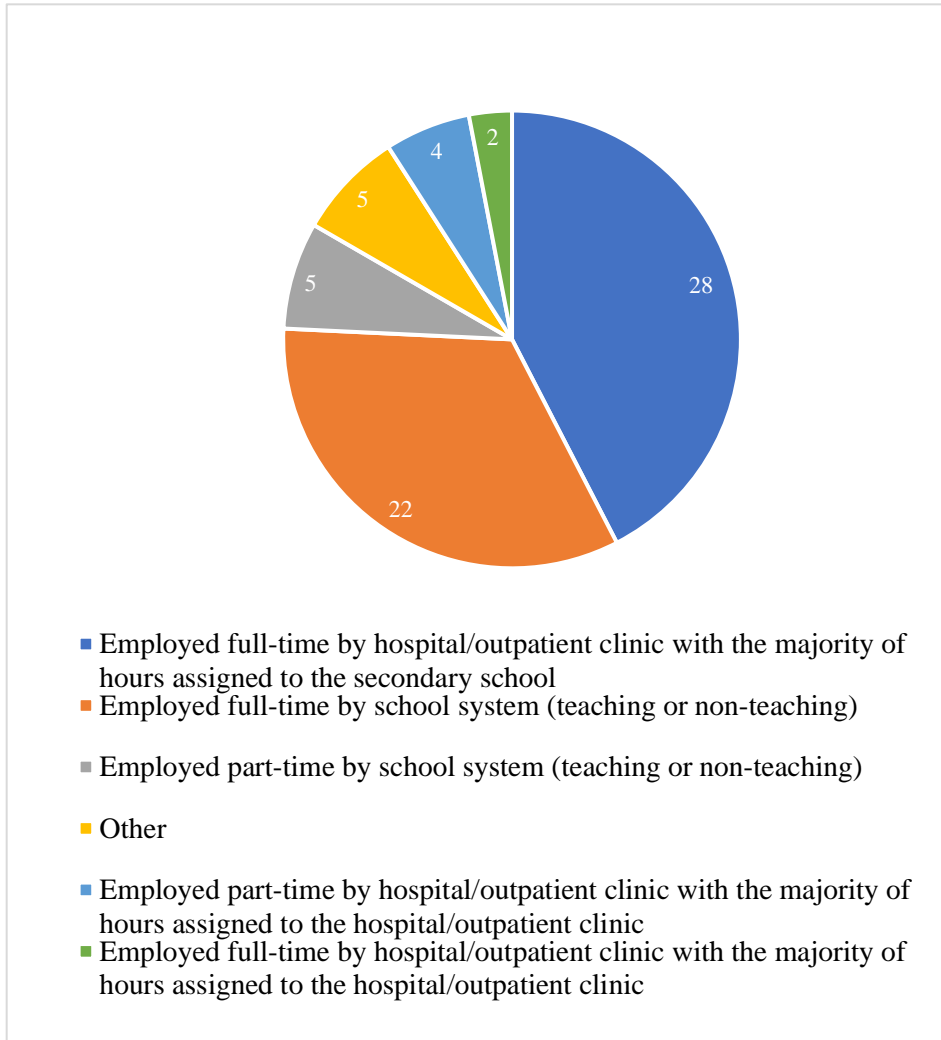
**Figure 5. Athletic Training Degree Program**



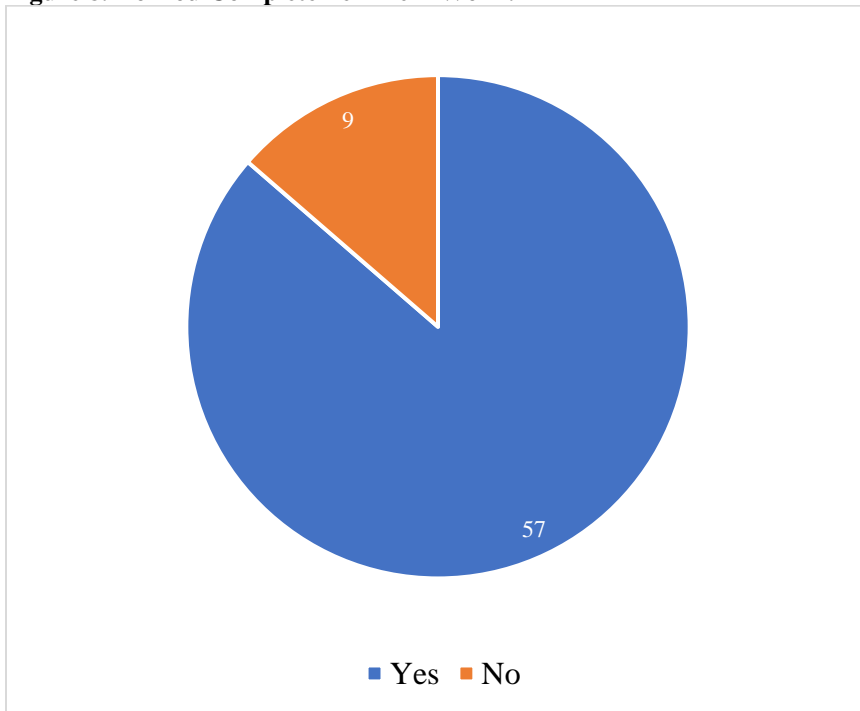
**Figure 6. Highest Degree Earned**



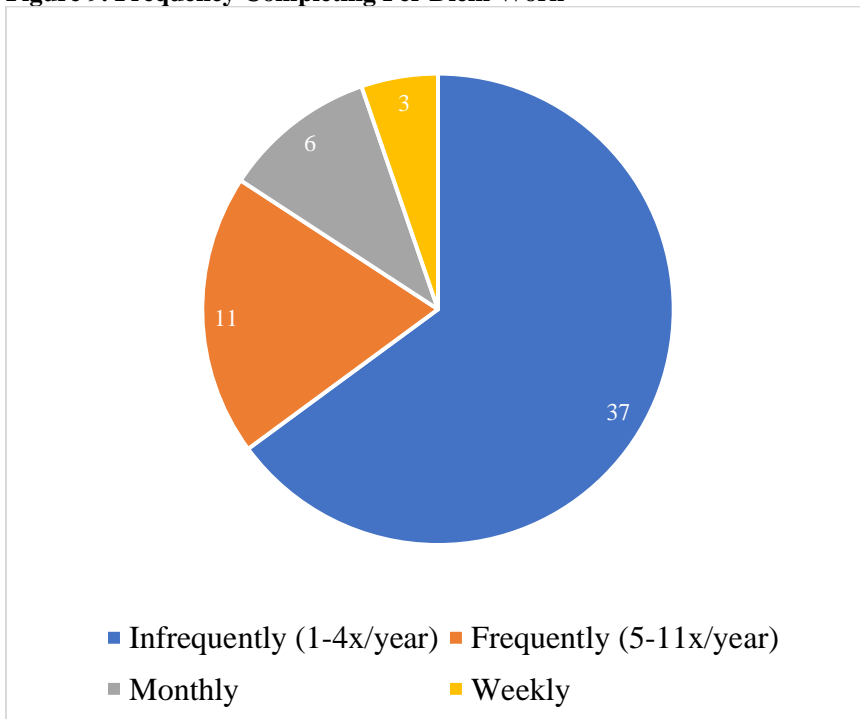
**Figure 7. Athletic Trainers' Employment Setting**



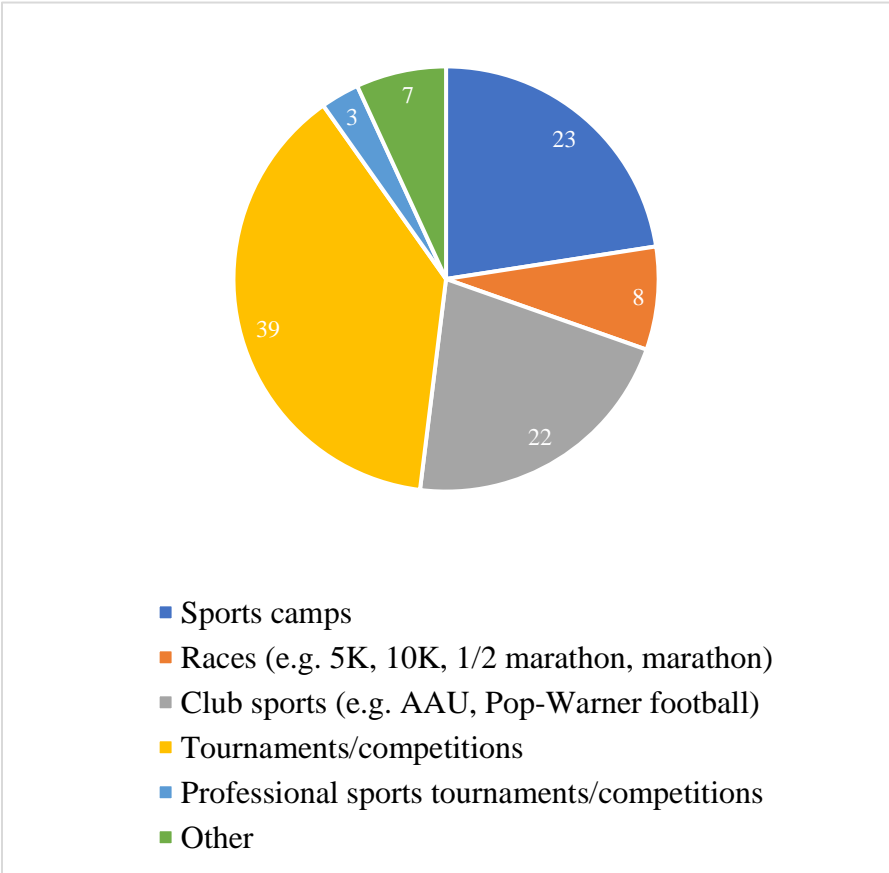
**Figure 8. Do You Complete Per Diem Work?**



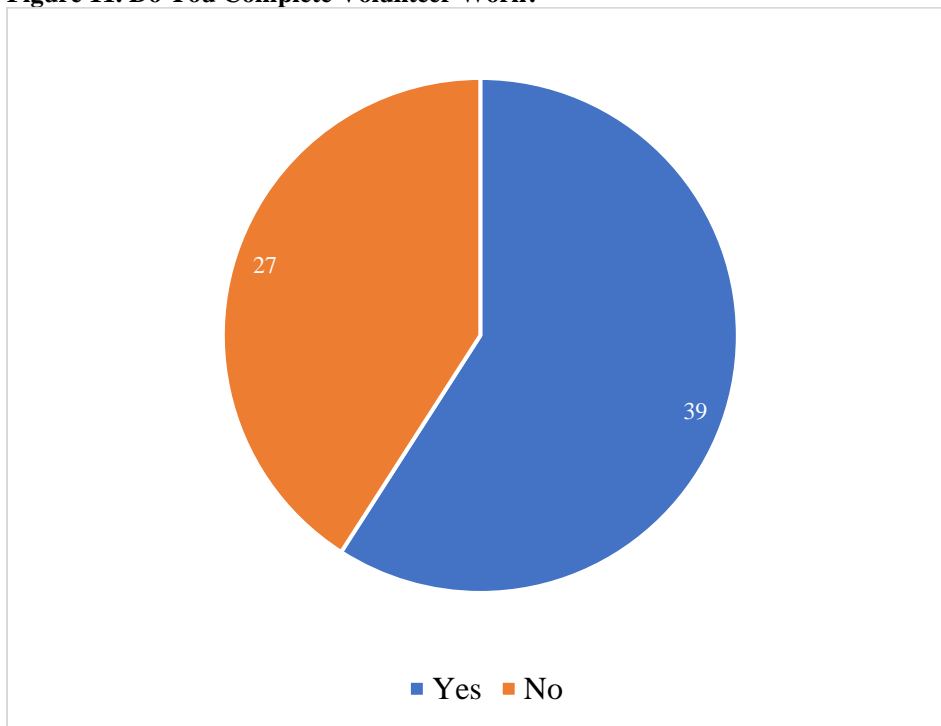
**Figure 9. Frequency Completing Per Diem Work**



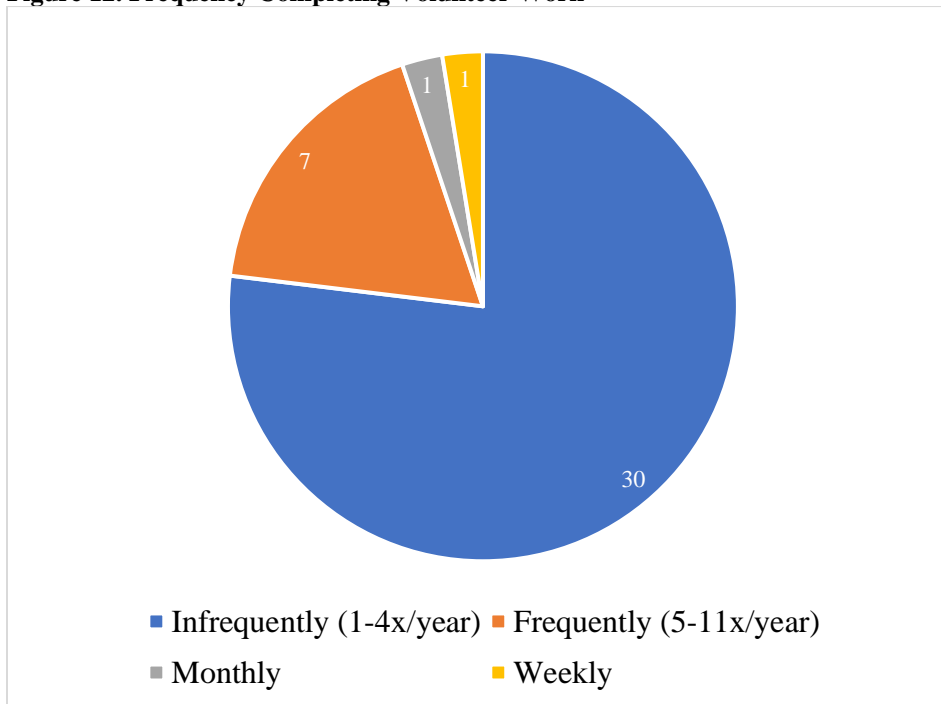
**Figure 10. Types of Per Diem Opportunities**



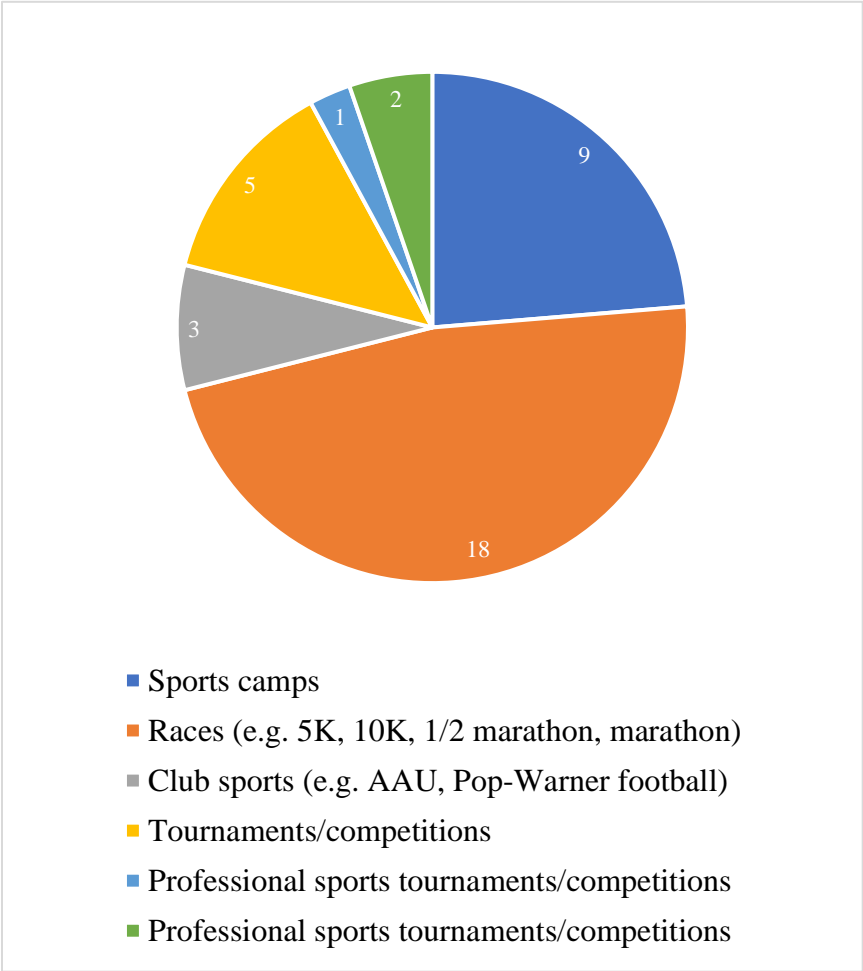
**Figure 11. Do You Complete Volunteer Work?**



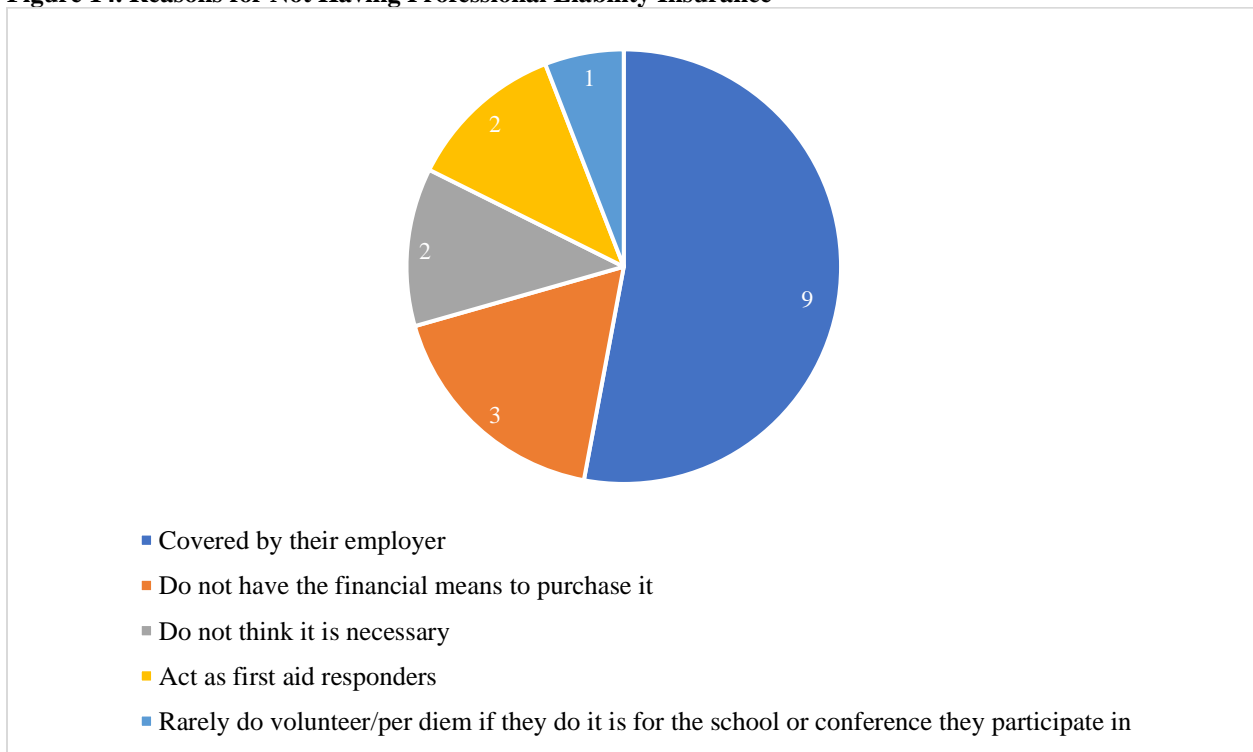
**Figure 12. Frequency Completing Volunteer Work**



**Figure 13. Types of Volunteer Activities**

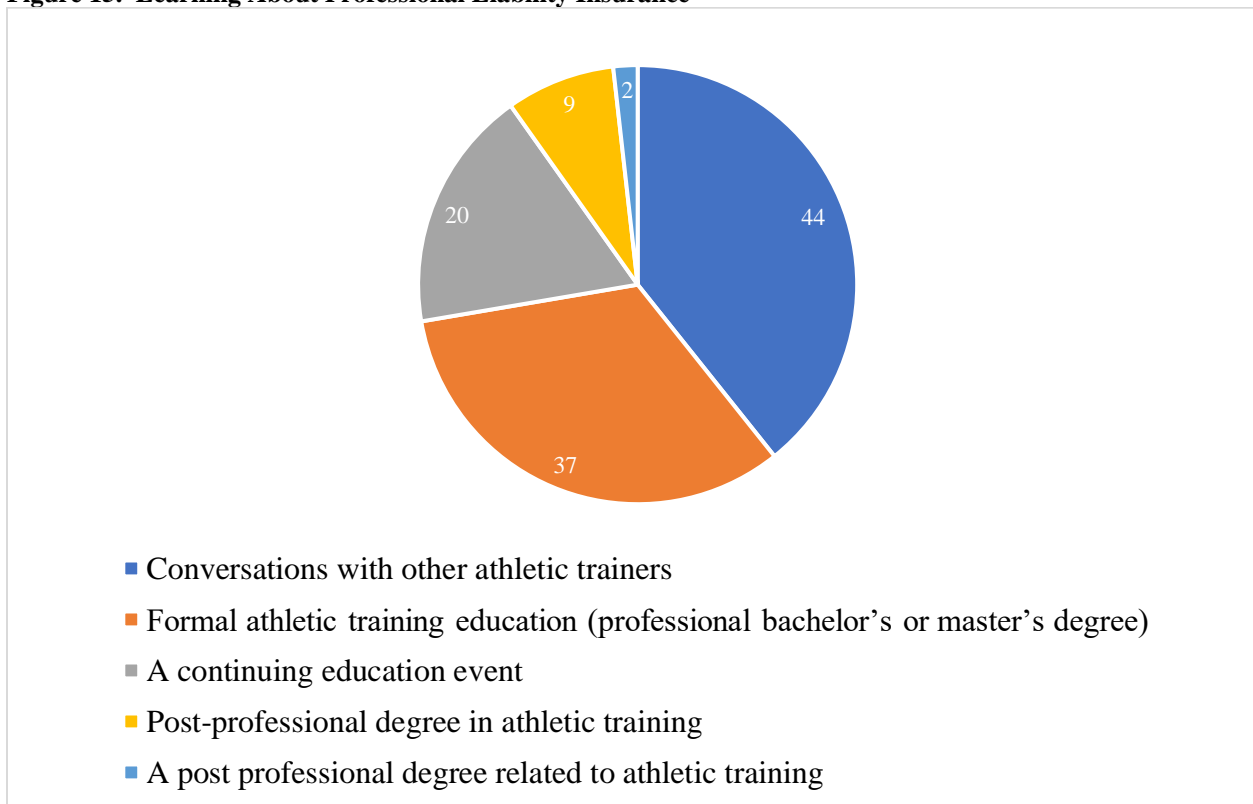


**Figure 14. Reasons for Not Having Professional Liability Insurance**

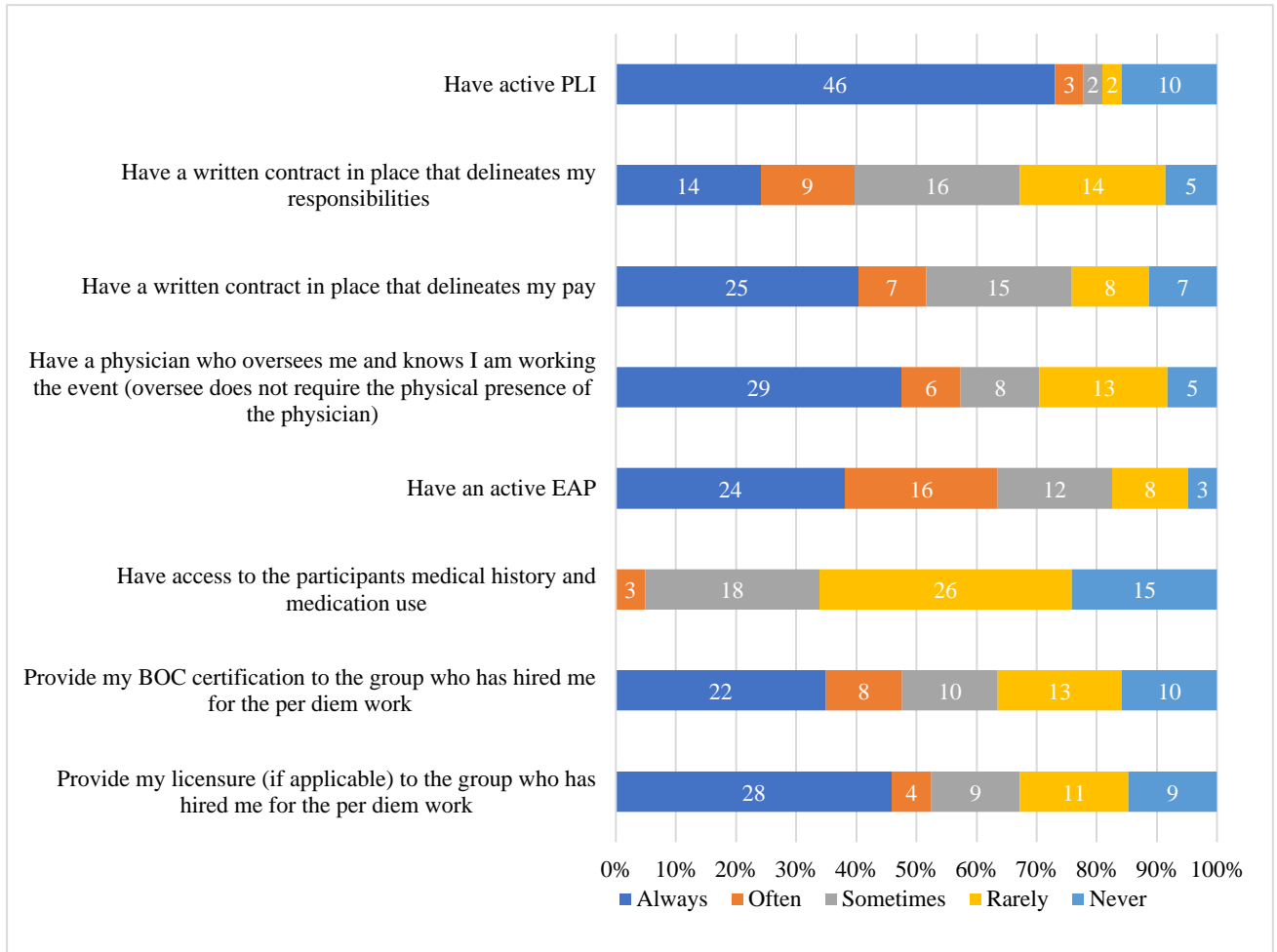




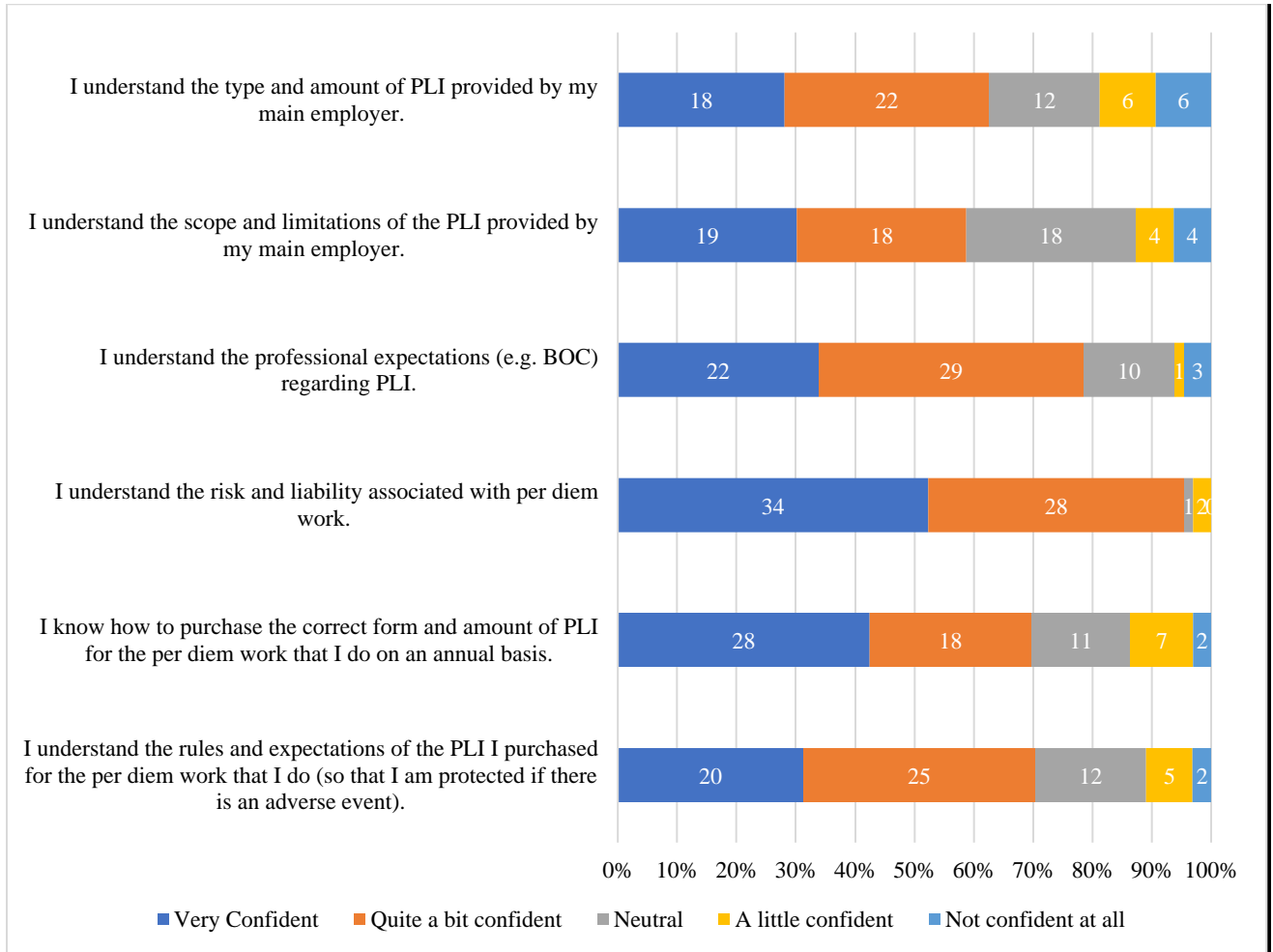
**Figure 15. Learning About Professional Liability Insurance**



**Figure 16. Professional Liability Insurance Business Practice**



**Figure 17. Confidence with Professional Liability Insurance**



## APPENDIX A

For the purposes of this questionnaire, **main employment** is defined as:

- Consistent across 6+ months (not temporary) and represents the majority (>75%) of hours worked during a given week
1. Which of the following **BEST** matches your **main employment** situation?
    - a. Employed full-time by school system (teaching or non-teaching)
    - b. Employed part-time by school system (teaching or non-teaching)
    - c. Employed full-time by hospital/outpatient clinic with the majority of hours assigned to the secondary school
    - d. Employed full-time by hospital/outpatient clinic with the majority of hours assigned to the hospital/outpatient clinic
    - e. Employed part-time by hospital/outpatient clinic with the majority of hours assigned to the secondary school
    - f. Employed part-time by hospital/outpatient clinic with the majority of hours assigned to the hospital/outpatient clinic
    - g. Other (please explain)

For the purposes of this questionnaire, **per diem work** is defined as:

- Per diem means “per day” or “for each day”
  - External to the main employment / separate contract or arrangement (even if the coaches, staff and location are the same as your main employment)
  - Paid employment that is separate from the main employment (not volunteer)
  - Often completed in the main employment’s off-hours
  - Sometimes called “moonlighting” or “contract work” or “PRN”
  - Examples include, but are not limited to: sports camps, races (e.g. 5K, marathon), club sports (e.g. AAU, Pop-Warner football), tournaments/competitions, professional sports tournaments/competitions. (These activities are NOT an assignment within the main employment contract.)
2. In a 12-month period, about how often do you complete **per diem work**?
    - a. Weekly
    - b. Monthly
    - c. Frequently (5-11 x/year)
    - d. Infrequently (1-4 x/year)
    - e. I do not complete per diem work
  3. During the past 12 months, in which of the following **per diem** opportunities have you engaged? **Select all that apply.**
    - a. Sports camps

- b. Races (e.g. 5K, 10K, ½ marathon, marathon)
  - c. Club sports (e.g. AAU, Pop-Warner football)
  - d. Tournaments/competitions
  - e. Professional sports tournaments/competitions
  - f. Other (please explain)
4. Have you ever used a per diem connecting website that links athletic trainers to per diem work? (e.g. Go4Ellis.com)
- a. Yes
  - b. No

For the purposes of this questionnaire, **volunteering** is defined as:

- External to the main employment / separate contract or arrangement (even if the coaches, staff and location are the same as your main employment)
  - Unpaid
  - Often done in the main employment's off-hours
  - Examples include, but are not limited to, sports camps, races (e.g. 5K, marathon), club sports (e.g. AAU, Pop-Warner football), tournaments/competitions, professional sports tournaments/competitions. (These activities are NOT an assignment within the main employment contract.)
5. In a 12-month period, about how often do you complete **volunteer activities**?
- a. Weekly
  - b. Monthly
  - c. Frequently (5-11 x/year)
  - d. Infrequently (1-4 x/year)
  - e. I do not complete volunteer activities
6. During the past 12 months, in which of the following **volunteer** activities have you engaged? **Select all that apply.**
- a. Sports camps
  - b. Races (e.g. 5K, 10K, ½ marathon, marathon)
  - c. Club sports (e.g. AAU, Pop-Warner football)
  - d. Tournaments/competitions
  - e. Professional sports tournaments/competitions
  - f. Other (please explain)

Professional liability insurance (PLI) is a type of insurance that protects health care professionals from bearing the entire cost of defending a malpractice claim made by a past or current patient.

For the purposes of this questionnaire, PLI is:

- Athletic trainer has purchased the policy on their own (not purchased by main employer)
- Athletic trainer has purchased the policy as additional protection from liability associated with main employment or per diem work

For the questions below, please use the prior definitions for main employment, per diem work and volunteer activities.

Please complete the sentence with the word that most represents your **per diem work**.

**7. When I participate in per diem work, I ...**

|  | Always | Often | Sometimes | Rarely | Never |
|--|--------|-------|-----------|--------|-------|
| ...have active PLI   |        |       |           |        |       |
| ...have a written contract in place that delineates my responsibilities  |        |       |           |        |       |
| ...have a written contract in place that delineates my pay   |        |       |           |        |       |
| ...have a physician that I collaborate standing orders with and knows I am working the event (standing orders include scope of responsibilities and preferred communication method/timing) |        |       |           |        |       |
| ...have an active EAP  |        |       |           |        |       |
| ...have access to the participants' medical history and medication use   |        |       |           |        |       |
| ...provide my BOC certification to the group who has hired me for the per diem work  |        |       |           |        |       |
| ...provide my licensure (if applicable) to the group who has hired me for the per diem work  |        |       |           |        |       |

**8. Please rate your confidence with the following statements.**

|   | Very Confident | Quite a bit Confident | Neutral | A little Confident | Not at all Confident |
|---|----------------|-----------------------|---------|--------------------|----------------------|
| I understand the type and amount of PLI provided by my main employer. |                |                       |         |                    |                      |
| I understand the scope and limitations of the PLI provided by         |                |                       |         |                    |                      |

|   |  |  |  |  |  |
|---|--|--|--|--|--|
| my main employer.   |  |  |  |  |  |
| I understand the profession's expectations (e.g. BOC) regarding PLI.  |  |  |  |  |  |
| I understand the risk and liability associated with per diem work.  |  |  |  |  |  |
| I know how to purchase the correct form and amount of PLI for the per diem work that I do on an annual basis.   |  |  |  |  |  |
| I understand the rules and expectations of the PLI I purchased for the per diem work that I do (so that I am protected if there is an adverse event). |  |  |  |  |  |

9. Do you currently have PLI?

- a. Yes
- b. No

10. If you responded no, why not?

- a. I was not aware I needed it
- b. I do not have the financial means to purchase it
- c. I do not think it is necessary
- d. I do not perform per diem or volunteer work
- e. My employer covers any diem work I do outside my main duties
- f. Other: explain

11. Do you recall learning about PLI in any of the following settings? Select all that apply.
- During your formal athletic training education (professional bachelor's or master's degree)
  - During your post-professional degree in athletic training
  - During a post-professional degree related to athletic training
  - During a continuing education event
  - During conversations with other athletic trainers
  - Other: explain
12. Age
- 18-30 years old
  - 31-40 years old
  - 41-50 years old
  - 51-60 years old
  - >61 years old
13. Gender
- Female
  - Male
  - Prefer not to say
  - Prefer to self-describe: \_\_\_\_\_
14. Which type of athletic training degree program did you complete?
- Bachelors – Professional clinical accredited program
  - Bachelors – Professional clinical internship program
  - Masters – Professional clinical accredited program
15. What year did you become a certified athletic trainer by successfully passing the Board of Certification© exam? Fill in the blank.
16. What is your highest degree earned? Choose one.
- Bachelors (e.g. BS)
  - Masters (e.g. MAT, MSAT)
  - Clinical doctorate (e.g. DAT)
  - Academic doctorate e.g. (PhD, EdD...)
  - Doctor of athletic training e.g. (DAT)
  - Other
17. In which state do you work? Fill in the blank.