



cause, and has caused, substantial and irreparable harm to the NATA and to competition in general by engaging in an on-going course of conduct designed to eliminate or lessen competition and to acquire and maintain monopoly power. Specifically, the APTA has formed a conspiracy, combination and monopoly designed to deny NATA members access to the manual therapy market and from practicing consistent with their scope of practice, qualifications, training and licensure. The Orthopaedic Section is a participant in this conspiracy. The effect of the Defendants' actions is to lessen competition between their members and NATA members. By engaging in such conduct, the Defendants intended to and have caused severe damage to the NATA members and to competition in the manual therapy market, all of which have a foreseeable and substantial adverse effect on U.S. commerce. Through this action, the NATA seeks redress from the wrongful acts of the Defendants and an order from the Court that the Defendants immediately discontinue their anticompetitive behavior.

## **II. PARTIES**

2. Plaintiff NATA is a Texas non-profit corporation with its principal place of business in Dallas, Texas.

3. Defendant APTA is an Illinois non-profit corporation with its principal place of business in Alexandria, Virginia. The APTA can be served with process through its registered agent, CT Corporation Systems, at 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604.

4. Defendant Orthopaedic Section is a Delaware non-profit corporation with its principal place of business in La Crosse, Wisconsin. The Orthopaedic Section can be served with process through its registered agent, The Company Corporation, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**III.**  
**JURISDICTION AND VENUE**

5. This action arises under the Sherman Act. The anticompetitive conduct that is the subject of this action was intended to and did have a reasonably foreseeable, direct and substantial effect upon United States commerce including, but not limited to, commerce among the states. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 15 U.S.C. § 15(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1337. This Court possesses personal jurisdiction over Defendants because: (i) they regularly do business in the State of Texas; (ii) Defendant APTA maintains an office, place of business, and/or agency for transacting business in the State of Texas, specifically the Texas Physical Therapy Association, Inc., which serves as the Texas Chapter of the APTA; and (iii) Defendants' anticompetitive conduct took place, in whole or in part, in Texas.

6. Venue is proper in the Dallas Division of the Northern District of Texas under 15 U.S.C. § 15(a) and 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the NATA's claims occurred within this district and division.

**IV.**  
**FACTUAL BACKGROUND**

**The Parties**

7. The NATA is a professional membership association for athletic trainers ("ATs") and others who support the athletic training profession.<sup>1</sup> With the majority of ATs as NATA members, the NATA currently has almost 30,000 members worldwide. The NATA works with its members and its affiliated organizations to further its mission of enhancing the quality of healthcare provided by ATs and the athletic training profession in general.

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<sup>1</sup> The vast majority of NATA's members are certified athletic trainers, or ATCs.

8. The APTA is a national professional association with more than 71,000 certified physical therapists (“PTs”) as members. It is the principal membership organization representing and promoting the profession of physical therapy. Additionally, the APTA has chapters in each state and several sections representing various practice areas. The APTA’s stated mission is to further PTs’ roles in the prevention, diagnosis, and treatment of movement dysfunctions and the enhancement of the physical health and functional abilities of members of the public.

9. The Orthopaedic Section is a component of the APTA created to serve as an advocate and resource for the practice of orthopaedic physical therapy. As of 2002, the Orthopaedic Section had over 13,000 members, all of whom were also members of the APTA.

**The Manual Therapy Market**

10. ATs are highly qualified healthcare professionals educated in preventing, recognizing, managing and rehabilitating injuries that result from physical activity. Athletic training is practiced by athletic trainers, healthcare professionals who collaborate with physicians to optimize activity and participation of patients and clients. Athletic training encompasses the prevention, diagnosis, and intervention of emergency, acute, and chronic medical conditions involving impairment, functional limitations, and disabilities. Athletic training has been recognized by the American Medical Association as an allied healthcare profession. ATs demonstrate knowledge and skill in six practice areas or domains: (i) prevention; (ii) clinical evaluation and diagnosis; (iii) immediate care; (iv) treatment, rehabilitation, and reconditioning; (v) organization and administration; and (vi) professional responsibility.

11. The NATA Educational Competencies and Board of Certification Standards delineate the procedures and techniques which ATs are certified and qualified to perform. ATs select, prescribe, and implement manual techniques when the examination findings, diagnosis,

and prognosis indicate use of manual therapy to (i) decrease edema, pain, spasm, or swelling; (ii) enhance health, wellness, and fitness; (iii) enhance or maintain physical performance; (iv) increase the ability to move; or (v) prevent or remediate impairments, functional limitations, or disabilities to improve physical function.

12. In a general sense, manual therapy is defined as the skilled use of hands to evaluate or treat a musculoskeletal condition (“Manual Therapy”). In the context of athletic training, Manual Therapy would include techniques such as mobilization and manual traction. PTs are also licensed to perform mobilization and manual traction under similar conditions. In this regard, the techniques and procedures utilized by PTs and ATs overlap. Accordingly, the techniques and procedures that ATs are licensed, educated and qualified to perform include many Manual Therapy techniques that the APTA, the Orthopaedic Section, and other affiliated organizations and members improperly claim are “exclusively” within the purview of PTs.

13. Contrary to this claim of ownership, no one organization or association owns Manual Therapy techniques. While Plaintiff acknowledges physical therapy may only be practiced by PTs, the techniques used by PTs are neither owned by them nor exclusively for their use. Thus, ATs are qualified and able to perform Manual Therapy in the marketplace in which they compete consistent with their education, licensure, qualifications, and training.

**The Anticompetitive Conduct**

14. With over 71,000 members, the APTA dominates the Manual Therapy market through its membership and affiliated organizations. This market power is used by the APTA’s affiliated organizations, such as the Orthopaedic Section.

15. The APTA exploits its power by wrongfully excluding ATs from the Manual Therapy market. For several years, the APTA has acted in concert with its members and

affiliated organizations and engaged in a pattern of conduct intended to prevent ATs from fulfilling their professional educational requirements and from effectively competing in the Manual Therapy market.

16. The APTA accomplishes this by: (i) coercing its members into refusing to educate ATs on techniques that are within the scope of ATs' practice, qualifications, training and licensure; (ii) barring ATs admission from continuing education conferences under the guise that ATs are not qualified to learn such procedures and techniques; (iii) falsely informing the public that certain procedures are "exclusively" within the purview of PTs; (iv) manipulating the *Coders' Desk Reference for Procedures*© to favor PTs and their practice; and (v) misstating the proper and appropriate use of the physical medicine codes of the *Current Procedural Terminology*©, as issued by the American Medical Association, by falsely informing physical therapy students that certain codes are exclusively for use by PTs.

17. On more than one occasion, the APTA's affiliated organizations advised APTA members not to teach courses to ATs, despite the fact that the athletic training certification authorizes ATs to perform the procedures at issue. Specifically, one PT received a letter advising that she should not teach a course on "joint mobilization of the lumbar spine" to ATs, citing as a reason concern about protecting the physical therapy profession. As previously stated, however, mobilization falls under the realm of Manual Therapy techniques which ATs are qualified, educated, and licensed to perform.

18. In addition to conspiring with its members to exclude ATs from learning certain procedures, the APTA improperly excluded ATs from its conferences based upon the notion that educating ATs was not legal under an instructor's physical therapy license.

19. On November 19, 2007, the Orthopaedic Section advised several dual-credentialed PT/ATs and at least one PT (a longtime APTA member) that presenting on certain topics at an NATA continuing education conference was against APTA policies because the manual therapy techniques to be taught fall “exclusively” within the purview of PTs. (*See* November 19, 2007 letter (the “November 19, 2007 Letter”), attached hereto as Exh. 1 and incorporated by reference.) Specifically, the November 19, 2007 Letter falsely states that the procedures were not properly delegated to an ATC because ATs lacked proper training and were not certified to perform such procedures.<sup>2</sup>

20. In reality, applicable guidelines confirm that the Manual Therapy techniques at issue are not “exclusively” within the purview of PTs or members of the APTA and its affiliated organizations and that it is not illegal to instruct ATs on these procedures. The continuing education conference was to include lectures on several Manual Therapy techniques, including joint mobilization, strain counterstrain, and muscle energy techniques, all of which are within the scope of ATs’ licensure and qualifications.

21. Thus, not only is the information contained in the November 19, 2007 Letter patently false, it also jeopardizes the NATA’s and ATs’ business reputations and calls into question their stability and future before the very people and businesses they rely upon to sustain and further their profession. As a direct result of the November 19, 2007 Letter, and citing potential negative business ramifications, several recipients withdrew from presenting at the conference, leaving the NATA scrambling to replace the speakers. The November 19, 2007

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<sup>2</sup> The November 19, 2007 Letter stated that the techniques to be taught “can not [sic] be delegated to an ATC in a patient population due to lack of training in a patient population or due to regulation for such a scope of clients.” (Exh. 1.)

Letter also attempted to preclude ATs from learning procedures they are qualified and licensed to know and perform.

22. The APTA has an agreement with the publisher of the *Coders' Desk Reference for Procedures*© to write and/or approve certain descriptions and definitions used in the book. Such descriptions and definitions are written to favor PTs and to hinder ATs' practice. These codes relate to the services ATs provide in the Manual Therapy market. Specifically, as influenced by the APTA, Codes 97005 and 97006 improperly limit ATC services and procedures for which reimbursement will be made in an effort to further exclude ATs from the relevant market. The APTA's agreement with Ingenix, the above referenced publisher, is an unreasonable restraint of trade.

23. Through its sizable market power and membership, the APTA has coerced its affiliated organizations, including but not limited to the Orthopaedic Section, its members and others into anticompetitive agreements. These agreements enable the APTA to maintain and advance its monopoly power in the Manual Therapy market and exclude ATs from competition.

24. The APTA's conduct harms competition in the Manual Therapy market because it: (i) creates a barrier to entry by excluding ATs from learning and perfecting Manual Therapy procedures that fall under their licensure, education, qualifications and practice; and (ii) restricts physicians' choices for their patients' Manual Therapy services. The APTA's exclusion means that ATs will not be able to effectively compete with the APTA's membership in the relevant market. By restricting supply in such a way, PTs can continue to control the market, including charging higher prices and manipulating the prices for Manual Therapy services.

25. On December 21, 2007, Chuck Kimmel, President of the NATA, sent a detailed letter to the APTA President in an effort to address the conduct described in this First Amended

Complaint. The letter described the APTA and Orthopaedic Section's conduct and asked that the APTA cooperate with the NATA in resolving the matter to the satisfaction of both parties.

26. Demonstrating its anticompetitive intent, APTA's January 25, 2008 response letter admitted it would not respond "in depth" to each of NATA's assertions. Further, the APTA did not investigate, or even respond to, a majority of the matters raised in the NATA's Letter, as requested.

**V.**  
**CAUSES OF ACTION**

**COUNT I – MONOPOLIZATION**  
**Sherman Act – 15 U.S.C. § 2**

27. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

28. The APTA has monopolized the market for Manual Therapy in violation of section 2 of the Sherman Act, 15 U.S.C. § 2.

29. The relevant geographic market for Manual Therapy marketplace is the entire United States because the Plaintiff and the APTA are associations with memberships spanning the entire nation. Further, the relevant services market is defined as the area where the Manual Therapy techniques performed by ATs and PTs overlap. This overlap occurs in the area of mobilization and manual traction when such procedures are used to (i) decrease edema, pain, spasm, or swelling; (ii) enhance health, wellness, and fitness; (iii) enhance or maintain physical performance; (iv) increase the ability to move; or (v) prevent or remediate impairments, functional limitations, or disabilities to improve physical function. (Together, the geographic relevant market and the relevant services market constitute the "Relevant Market."). To be clear, the Relevant Market is where techniques overlap – Plaintiff is not referring to an attempt by ATs

to perform physical therapy. Rather, Plaintiff is referring to techniques used by both healthcare professions, over which the APTA has anticompetitively and improperly claimed ownership.

30. The APTA possesses monopoly power in the Relevant Market.

31. The APTA's monopoly power in the Relevant Market has been achieved, maintained and advanced through agreements with its members, affiliated organizations, and/or others in the healthcare industry. Some of these agreements were formed by coercion. These agreements exclude competitors, specifically ATs, from competing in the Relevant Market.

32. The APTA enforced and maintained its monopoly power and its control over its membership by sending threatening communications containing false information to those members who attempt to work in cooperation with ATs or the NATA.

33. Through the acts described above and similar anticompetitive and exclusionary conduct and practices, the APTA has willfully and wrongfully achieved, maintained and expanded its monopoly power in the Relevant Market by: (i) creating barriers to entry into the Relevant Market; (ii) intentionally preventing ATs from receiving education which would better enable them to compete in the Relevant Market and therefore undermined their development; and (iii) manipulating billing definition codes, creating the appearance that ATs' scope of practice, qualifications, and licensing is more narrow than it actually is.

34. No legitimate justifications exist for the APTA's exclusionary and anticompetitive conduct. To the extent that the APTA is seeking to achieve a legitimate business purpose through its conduct, it has not used the least restrictive means for doing so. Any claimed procompetitive benefit is outweighed by anticompetitive harm and any alleged legitimate business justifications are mere pretexts for illegal monopoly maintenance.

35. The APTA's conduct has directly and proximately caused injury to competition and to the NATA and its members. That injury is of the kind that antitrust laws were intended to prohibit and, therefore, constitutes antitrust injury.

**COUNT II – ATTEMPTED MONOPOLIZATION**  
**Sherman Act – 15 U.S.C. § 2**

36. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

37. Alternatively, the APTA has engaged in anticompetitive and exclusionary conduct with a specific intent to monopolize the Relevant Market and has created a dangerous probability of achieving a monopoly in violation of section 2 of the Sherman Act, 15 U.S.C. § 2.

38. The APTA's conduct has directly and proximately caused injury to competition and to the NATA and its members. That injury is of the kind that antitrust laws were intended to prohibit and, therefore, constitutes antitrust injury.

**COUNT III – ILLEGAL CONTRACTS, COMBINATIONS,  
OR CONSPIRACIES IN RESTRAINT OF TRADE**  
**Sherman Act – 15 U.S.C. § 1**

39. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

40. The APTA has combined and/or conspired with its members, affiliated organizations, including the Orthopaedic Section, and/or others in an illegal restraint of trade in violation of section 1 of the Sherman Act, 15 U.S.C. § 1.

41. The APTA entered into agreements and conspired with its members and affiliated organizations, including the Orthopaedic Section, to exclude ATs from receiving education that would allow them to compete in the Relevant Market. The APTA also entered into an agreement with Ingenix, the publisher of the *Coders' Desk Reference for Procedures*®, to improperly

influence billing definitions with regard to ATs and their procedures. These agreements have unreasonably restrained trade in the Relevant Market in violation of section 1 of the Sherman Act, 15 U.S.C. § 1. The APTA leveraged its monopoly power to falsely inform educators and the public that ATs are not allowed to perform or even learn certain procedures.

42. This anticompetitive conduct has an adverse effect on competition because it limits access to the Relevant Market and therefore limits the competition within the Relevant Market. Thus, patients and physicians have fewer choices for Manual Therapy treatment.

43. No legitimate justifications exist for the described exclusionary and anticompetitive conduct. To the extent that the Defendants are seeking to achieve a legitimate business purpose through their conduct, they have not used the least restrictive means for doing so. Any claimed procompetitive benefit is outweighed by anticompetitive harm and any alleged legitimate business justifications are mere pretexts for illegal restraints of trade.

44. The Defendants' conduct has directly and proximately caused injury to competition and to the NATA and its members. That injury is of the kind that antitrust laws were intended to prohibit and, therefore, constitutes antitrust injury.

**COUNT IV – GROUP BOYCOTT**  
**Sherman Act – 15 U.S.C. § 1**

45. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

46. Acting in combination with its members and affiliated organizations, including the Orthopaedic Section, the APTA has cut off ATs' and the NATA's access to education necessary to compete in the Relevant Market in violation of section 1 of the Sherman Act, 15 U.S.C. § 1.

47. As described herein, the APTA, its members, and affiliated organizations, including but not limited to the Orthopaedic Section, maintain a dominant position in the Relevant Market.

48. No legitimate justifications exist for the described exclusionary and anticompetitive conduct. To the extent that the Defendants are seeking to achieve a legitimate business purpose through their conduct, they have not used the least restrictive means for doing so. Any claimed procompetitive benefit is outweighed by anticompetitive harm and any alleged legitimate business justifications are mere pretexts for illegal anticompetitive conduct.

49. The Defendants' conduct has directly and proximately caused injury to competition and to the NATA and its members. That injury is of the kind that antitrust laws were intended to prohibit and, therefore, constitutes antitrust injury.

**VI.**  
**STATUTORY TREBLE DAMAGES AND ATTORNEYS' FEES**

50. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

51. Under 15 U.S.C. section 15, the actual damages suffered by the NATA and its membership are required to be trebled and NATA is entitled to recover its attorneys' fees.

52. Plaintiff requests that such damages be trebled and attorneys' fees be awarded as required by statute.

**VII.**  
**APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTION**

53. The NATA incorporates by reference all preceding paragraphs as if fully set forth herein.

54. The APTA, its members, and its affiliated organizations, including but not limited to the Orthopaedic Section, have engaged in a continuing pattern and practice of antitrust violations that are likely to continue unless the Defendants are permanently enjoined from engaging in such unlawful conduct in the future under Federal Rule of Civil Procedure 65.

55. The Defendants' wrongful and illegal acts have irreparably harmed, and threaten to further irreparably harm, the NATA for which there is no adequate remedy at law.

56. The actions complained of have caused and will continue to cause irreparable injury to the NATA unless this Court grants preliminary and permanent injunctive relief under Federal Rule of Civil Procedure 65. The NATA seeks an order enjoining the Defendants from continuing the unlawful conduct alleged herein and from entering into any other combination, conspiracy or agreement having similar purposes and effects.

57. Specifically, the injunction should enjoin the Defendants from:

- taking affirmative actions to preclude ATs from practicing and from receiving education on Manual Therapy techniques that are within the scope of ATs' practice, qualification, training, and licensure;
- enforcing any and all policies that bar PTs from instructing athletic trainers in rehabilitation techniques and modalities; and
- excluding ATs, NATA members and affiliates' members from obtaining education on procedures they are legally qualified to perform.

58. The injunction should also enjoin the APTA from:

- banning athletic training students from participating in clinical training programs;
- prohibiting PTs from receiving instruction from athletic trainers or at athletic training continuing education programs, including those sponsored by the NATA or its affiliated organizations;
- misrepresenting that ATs are unlicensed or unqualified to perform tasks they are legally, academically and/or clinically qualified to perform and misstating and misrepresenting the credentials, education, and scope of practice of ATs;

- improperly influencing the billing definitions with regard to ATs and their procedures in the *Coders' Desk Reference for Procedures*©; and
- misstating the proper and appropriate use of the physical medicine codes of the *Current Procedural Terminology*© as issued by the American Medical Association including, specifically, refraining from misleading comments that ATs are not allowed to use these codes when billing third parties or that the codes are for the exclusive use of PTs.

59. For the reasons stated herein, Plaintiff requests that a preliminary injunction be issued pending trial, and a permanent injunction be entered upon final trial of this matter.

**VIII.**  
**JURY TRIAL DEMAND**

60. Plaintiff hereby demands that this case be determined by a jury.

**IX.**  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff National Athletic Trainers' Association, Inc. respectfully requests that Defendants American Physical Therapy Association and Orthopaedic Section, APTA, Inc., be cited to appear and, upon final trial of the merits, that Plaintiff recover judgment against Defendants and that Plaintiff be awarded:

- a. actual and consequential damages;
- b. punitive and treble damages, to the extent permitted by law;
- c. reasonable attorneys' fees and related costs as permitted by law;
- d. costs of court;
- e. pre-judgment and post-judgment interest as provided by law;
- f. entry of an injunction enjoining Defendants and their agents, servants, employees, representatives, and those in active concert or participation with them from:

- taking affirmative actions to preclude ATs from practicing and from receiving education on Manual Therapy techniques that are within the scope of ATs' practice, qualification, training, and licensure;
  - enforcing any and all policies that bar PTs from instructing athletic trainers in rehabilitation techniques and modalities; and
  - excluding ATs, NATA members and affiliates' members from obtaining education on procedures they are legally qualified to perform.
- g. entry of an injunction enjoying Defendant APTA and its agents, servants, employees, representatives, and those in active concert or participation with it from:
- banning athletic training students from participating in clinical training programs;
  - prohibiting PTs from receiving instruction from athletic trainers or at athletic training continuing education programs, including those sponsored by the NATA or its affiliated organizations;
  - misrepresenting that ATs are unlicensed or unqualified to perform tasks they are legally, academically and/or clinically qualified to perform and misstating and misrepresenting the credentials, education, and scope of practice of ATs;
  - improperly influencing the billing definitions with regard to ATs and their procedures in the *Coders' Desk Reference for Procedures*©; and
  - misstating the proper and appropriate use of the physical medicine codes of the *Current Procedural Terminology*© as issued by the American Medical Association including, specifically, refraining from misleading comments that ATs are not allowed to use these codes when billing third parties or that the codes are for the exclusive use of PTs.
- h. any and all other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

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