

SPORTS MEDICINE

# LEGAL DIGEST

QUARTERLY LEGAL NEWSLETTER FOR THE NATIONAL ATHLETIC TRAINERS' ASSOCIATION

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### UNDERSTANDING EMPLOYMENT DURING A NATIONAL HEALTH CRISIS

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### CONSIDERATIONS FOR DEVELOPING A TRANSGENDER POLICY

# Athletic Trainer Professional Liability Insurance:

## 3 Questions to Consider

**A**s you are reading “Sports Medicine Legal Digest”, chances are you are interested, curious or just want to learn more about the legal aspects of sports medicine. One frequent topic of conversation is malpractice cases against athletic trainers. You may know someone or another colleague who has had an action or claim as an athletic trainer. As licensed health care professionals, athletic trainers should exercise caution and take note of the important role insurance plays in managing both their professional and personal risk management.

Following are the three questions to ask yourself to learn more about professional liability insurance.

### **What is professional liability insurance and what does it cover?**

Professional liability insurance, sometimes known as medical malpractice insurance, protects licensed health care professionals (e.g., athletic trainers) from liability associated with wrongful practices resulting in bodily injury, medical expenses and property damage, as well as the cost of defending lawsuits related to such claims.

Professional liability insurance generally covers allegations of negligence from the acts, errors and omissions in the rendering of professional athletic training services.

### **Why you may need insurance?**

You may be required to have professional liability insurance for business or contract purposes. For example, independent contractors or practice owners typically are required to have specific limits.

If you are an employed athletic trainer, you should check your employer’s policy to ensure it covers you for the services provided as an athletic trainer. There may be gaps in your employer’s insurance such as:

- ✓ Policy limits may not be high enough to protect you and all your co-workers.
- ✓ Coverage may not include lost wage or licensing board reimbursement.
- ✓ Coverage may not extend to services performed outside of the workplace, such as when you engage in volunteer, moonlighting or self-employed services.

**Tip:** Review the NATA Liability Toolkit for more information on evaluating your risks and liability.

### **How to evaluate coverage that is right for you?**

The type and amount of coverage may vary based on your circumstances. The Professional Liability Insurance Checklist provides an overview and things to consider when evaluating professional liability insurance for the individual athletic trainer. Keep in mind; you may contact an experienced professional liability insurance provider for more information.

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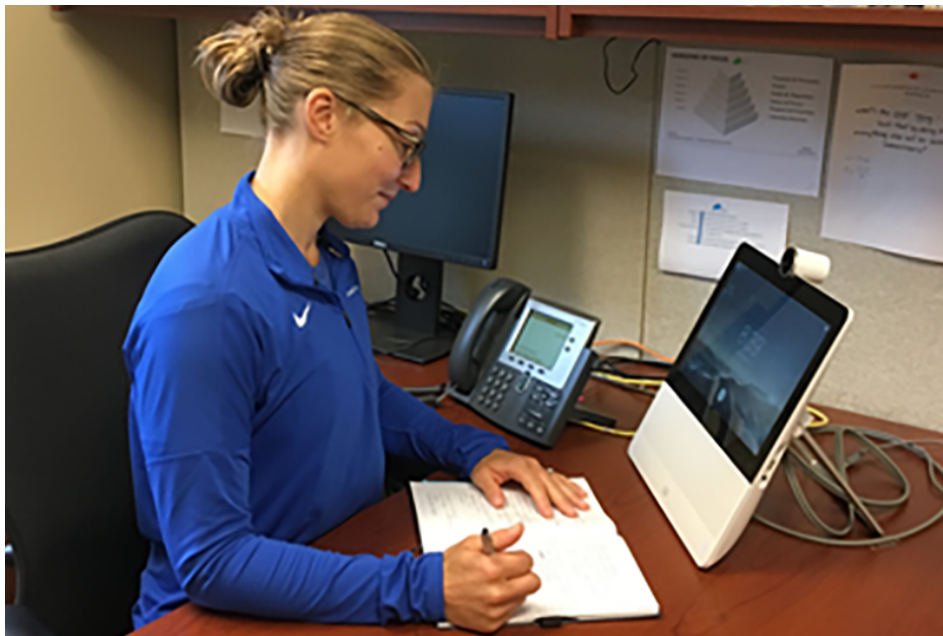


### **Professional Liability Insurance Checklist**

- ✓ **Policy Form:**  
Occurrence or Claims Made  
Occurrence based coverage is the most common for athletic trainers.
- ✓ **Liability Limits:**  
The most common limits purchased are \$1 million per claim / \$3 million aggregate. Be sure to check any contractual requirements for specific limits.
- ✓ **Legal Defense:**  
Attorney expenses and fees may be included within or outside the liability limits.
- ✓ **Supplemental Coverages:**  
Check to see if additional coverages are included such as: licensing board reimbursement, deposition expense, wage loss and expense, HIPAA, etc.
- ✓ **Review:**  
Make sure both the insurance provider and company have experience and expertise in athletic training.
- ✓ **Inquire:**  
See if they are sponsored by a national association.

**Tip:** Check the Coverage Details online to learn more.





# Understanding Employment During a National Health Crisis

BY CLAIRE HIGGINS

Only a handful of times in history has the United States endured a public health crisis, and even fewer times has that resulted in an excess of citizens unemployed, managing risk more than ever before. Never, though, has the unemployment rate jumped as high or as quickly as it did during the COVID-19 pandemic.

While many athletic trainers were able to transition into roles on the front lines in health systems through contracts, many others were part of the more than 38 million who filed for unemployment between March and June this year. Uncertainty of COVID-19 has slowed the economic recovery time, which has left athletic trainers employed at will—meaning they can be terminated with or without cause at any time without severance—filing for unemployment en masse and looking to generate income in other settings.

The pandemic has increased the need for athletic trainers to understand their state and federal labor laws and how they are protected as employees from liability should a public health crisis ever change the course of daily life in the U.S. again.

Jim Zeszutek and Nick Godfrey, both attorneys who most often work in sports law representing NCAA athletic trainers, coaches and administrators and others in the sports industry in NCAA enforcement and infractions matters, general employment matters, wrongful termination litigation, and other professional liability claims, are able to offer best practices for ensuring athletic trainers are properly prepared and covered during a national emergency and during daily activities.

Although the federal government temporarily allowed states to expand unemployment insurance during the COVID-19 pandemic through the CARES Act and Families First Coronavirus Response

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### REVIEWED BY

The content included in this issue was reviewed by the NATA Editorial Advisors, Pat Aronson, PhD, ATC; Scott Cheatham, DPT, PhD, ATC; Mike Goldenberg, MS, ATC; Eric McDonnell, MEd, ATC, LAT; Tim Weston, MEd, ATC; and Cari Wood, ATC; and the NATA Professional Responsibility in Athletic Training Committee.

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## Q & A



### INCOMING CHAIR ANSWERS QUESTIONS RELATED TO LGBTQ+ ISSUES

What is the role of the NATA LGBTQ+ Advisory Committee? What are the major issues facing athletic trainers in dealing with LGBTQ+ athletes? *Sports Medicine Legal Digest* posed these and other questions to a true expert in the field: NATA LGBTQ+ Advisory Committee incoming Chair Rebecca Lopez, PhD, ATC, CSCS, who is an associate professor in the Department of Orthopedics & Sports Medicine and program director of post-graduate athletic training at the University of South Florida.

#### Q. You're the incoming chair of the NATA LGBTQ+ Advisory Committee. What is the committee's mission and its major goals?

The main mission of the NATA LGBTQ+ Advisory Committee is to advocate for an environment of inclusion, respect and equity and appreciation of differences for both athletic trainers and their diverse patient populations. Our main goals are to educate others about the LGBTQ+ community as well as provide resources and tools that athletic trainers may need regarding the LGBTQ+ community. Our ultimate goal is to promote inclusion and ensure that we provide compassionate health care for all.

#### Q. What are some of the activities the committee has undertaken since its inception and what are plans for 2020?

Our committee, under the direction of former Chair Pat Aronson, PhD, LAT, ATC, has really accomplished quite a bit in a short amount of time. In addition to getting this committee up and running and coordinating district representatives, this group has created

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Act, according to Godfrey, the process for filing and receiving benefits is largely the same.

"We always suggest do it as quickly as possible," Godfrey said, "but particularly in a time like this."

The temporary laws allowed many workers who were not previously covered, such as gig economy workers, independent contractors and self-employed athletic trainers, to likely be eligible for unemployment benefits if the coronavirus impacted their ability to work.

For athletic trainers who decide to take on per diem or contract work after being laid off or furloughed, professional liability insurance should be considered, said Heather Ingledue, Principal at Mercer Consumer. Mercer Consumer provides personal professional liability insurance for athletic trainers in various settings.

The federal government, in addition to expanding benefits, also allowed states to amend their process for filing for unemployment benefits due to an excessive increase in people filing during the pandemic. When states were inundated with people filing, many had to enforce new protocols to file in order to accommodate the large number of applicants.

Regardless of the national situation, Godfrey recommends that athletic trainers file for unemployment benefits immediately after being terminated or placed on furlough, especially during a time when state offices will be flooded with applications.

It's also important to obtain written confirmation or documentation that your unemployment is due to the ongoing pandemic or a national emergency. While most employers should know to provide this, Godfrey said it's a good idea to keep it in mind as something to confirm.

After those steps are completed, it's a bit of a waiting game, but the process to obtaining unemployment insurance doesn't change during a pandemic.

In an effort to increase new job opportunities after being unemployed or furloughed, Zeszutek recommends continuous networking.

"Especially for a young athletic trainer, stay in the business," he said, adding that he recommends keeping up with past colleagues and peers in the professional organization to create more job opportunities in the future.

#### More to Know About Employment as an AT

In addition to filing for unemployment benefits or securing professional liability coverage to continue work as an AT, Zeszutek and Godfrey

recommend following and staying up to date on state laws and contract obligations.

Many states, for example, have caveats for professionals who work with athletes or have a split season. So, if an athletic trainer is in between seasons during a national crisis, it is not likely they will be eligible for unemployment.

While many athletic trainers are hired as employees at will and can be terminated without severance, a way to decrease the risk of this is to negotiate a salaried or term contract with the employer at the time of hire.

"Most colleges and universities, or other employers of athletic trainers, aren't necessarily used to doing things that way, but we advise our clients to do that because it provides certainty," Godfrey said.

More experienced or tenured athletic trainers are more likely to discuss one- to two-year term contracts with an employer, but the option to negotiate is always available, if you can prove your worth as an AT, Zeszutek said.


"Usually we find that our more experienced clients have better opportunity of seeking and obtaining term in an employment contract," he said.

Godfrey added that "when an athletic trainer has a longstanding relationship with a university or an employer," that can also increase the possibility of term contract.

The attorneys suggested ensuring athletic trainers are included on staff as part of the sports medicine team. Professional liability, according to Ingledue, can also ensure coverage as a health care professional, if the employer does not identify ATs as such.

Whether or not an athletic trainer is employed at will or contracted, it's important to understand the rights within the contract with an employer.

Post-pandemic, Godfrey said, employers may adjust contracts to include a clause about national or public health emergencies that will likely benefit them, and not necessarily the employee. While it is not guaranteed, being cautious and reading contracts thoroughly before signing will ensure the best possible outcome should another national emergency occur and employment is at risk again for athletic trainers.

NATA provides resources for athletic trainers interested in learning more about employment, unemployment benefits and labor laws through the NATA Government Affairs Committee. You can also learn more by visiting [www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx](http://www.careeronestop.org/LocalHelp/UnemploymentBenefits/find-unemployment-benefits.aspx). 

# Appropriate Privacy of Information

BY TIMOTHY NEAL, MS, ATC, CCISM, AND JEFF KONIN, PHD, ATC, PT  
NATA PROFESSIONAL RESPONSIBILITY IN ATHLETIC TRAINING COMMITTEE

**A**s health care professionals, ATs are responsible for maintaining the privacy of patient care information. What are the considerations to appropriately maintain the privacy of patient care information? The areas of consideration are:

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- NATA Code of Ethics

HIPAA is a federal law that sets rules for health care providers and health insurance companies about who can look at and receive a patient's health information. This law gives the patient rights over their health information. This includes the right to get a copy of health information, make sure it is accurate and know who has seen the health information.<sup>1</sup>

One of the key elements of HIPAA is security and privacy of a patient's health information (PHI). This federal law affects all ATs, not just ATs who engage in electronic transfer of PHI to an insurance company for payment of services. Thus, ATs must comply with securing PHI, and protect the private information contained within the patient's health history record.

The NATA Code of Ethics<sup>2</sup> addresses the ethical duty of an NATA member to protect a patient's medical record in the following principles.

**Principle 1.3:** Members shall preserve the confidentiality of privileged information and shall not release or otherwise publish in any form, including social media, such information to a third party not involved in the patient's care without a release unless required by law.

This involves several areas of confidentiality of PHI. Principle 1.3 is applicable in verbal and written communications. Only those authorized to receive health information of a patient should receive it. This includes information shared with coaches and media. The patient must provide written permission for the AT to provide health information. Where this principle also applies is social media. ATs shouldn't post information, including photographs of injuries, on any social media platform without the expressed written consent of the patient.

**Principle 4.4:** Members shall not, through direct or indirect means, use information obtained in the course of the practice of athletic training to try and influence the score or outcome of an athletic event, or attempt to induce financial gain through gambling.

Principle 4.4 addresses releasing PHI, either directly or indirectly, to others not authorized to know about a patient's health that could be used in gambling activities. Even off-handed comments to anyone not authorized to receive PHI can be used in placing bets on sporting contests. NATA recommends never discussing PHI outside the confines of the sports medicine staff. This exclusion of releasing information to those not authorized to receive it includes family members, friends and classmates (for athletic training students).

In addition to the NATA Code of Ethics, understanding the importance of privacy begins with the athletic training education competencies, in which the health care administration section states "athletic trainers function within the context of a complex health care system. Integral to this function is an understanding of risk management, health care delivery mechanisms, insurance, reimbursement, documentation, patient privacy and facility management." Specifically, ATs "identify and explain the statutes that regulate the privacy and security of medical records."<sup>3</sup>

The Commission on Accreditation of Athletic Training Education (CAATE) also requires that all students learn the importance of privacy of patient information. The most recent CAATE Standards, published in 2020, address "contemporary principles and practices" to include maintaining data privacy, protection and data security. Additionally, the standards describe practicing health care in a manner that is compliant with the BOC Standards of Professional Practice, to include HIPAA and Family Education Rights and Privacy Act (FERPA) adherence.<sup>4</sup>

Additionally, the Board of Certification Inc. (BOC) has published two helpful resources to assist athletic trainers in reviewing how one handles confidential patient information.

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the NATA Safe Space Ally Training, published articles regarding LGBTQ+ issues within athletic training, delivered presentations at the state, district and national levels on how to create an inclusive athletic training environment, created an LGBTQ+-specific grant through the NATA Research & Education Foundation and created an NATA LGBTQ+ award, among others.

At the district level, our committee members are working to create district LGBTQ+ advisory committees with state representatives. Additionally, we have collaborated with many NATA committees to work together toward our common goals.

In 2020, our plans are to continue our trajectory, collaborating with other NATA committees and continuing to educate others with a focus on providing athletic trainers with guidelines and resources they can implement into their clinical practices. We want the education, research and resources we provide to be able to be translated immediately into action.

## Q. What are the major issues facing athletic trainers who are members of the LGBTQ+ community?

Athletic trainers within the LGBTQ+ community face many of the issues that others in the community face in their day-to-day lives. These may include lack of professional support, fear of discrimination, lack of job security as many states still don't have protections for job termination or discrimination in the workplace, health care disparities, etc. This is why employers are strongly encouraged to develop an environment of inclusion and ensure that their nondiscrimination policy includes sexual orientation and gender identity.

## Q. What are some of the major issues facing ATs who are treating athletes who are members of the LGBTQ+ community?

In the past few years since this committee has been created, we have heard from many athletic trainers that they would like more education and

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## Q&A, *continued from page 05*

resources. Athletic trainers would greatly benefit from taking a safe zone/safe space training in their current setting (or local community) in order to learn more about the LGBTQ+ community and the needs of their patients. Increasing cultural competence as it relates to any group of individuals someone may not be familiar with can be beneficial to both the clinician and patient. Increasing education and cultural competence will ensure the clinician is providing health care without bias and providing patient-centered care to all patients. As a committee, we are working on gathering and/or creating resources, such as templates of medical forms, nondiscrimination policies and transgender policies, so clinicians can use these templates and adapt them to their own setting. It is important for clinicians to have access to the resources they need to continue to provide quality patient care.

### **Q. As chair of the Southeast Athletic Trainers' Association's LGBTQ+ Advisory Committee, did you find that most athletic trainers were aware of the issues facing the LGBTQ+ community? Please explain.**

As I was working on creating the SEATA LGBTQ+ Advisory Committee, I learned that some athletic trainers were very eager to learn more, while others weren't really aware of the issues faced by the LGBTQ+ community or the need for a committee. Since we are a relatively new committee, we are always looking for opportunities to spread the word and provide educational opportunities so athletic trainers can learn more about how they can be more inclusive in their athletic training environments. We have presented at the SEATA educators' meeting, SEATA's annual meeting, the Kentucky Athletic Trainers' Association annual meeting and have a Twitter account to share updates. Follow at [www.twitter.com/D9LGBTQ](https://twitter.com/D9LGBTQ).

## APPROPRIATE PRIVACY OF INFORMATION, *continued from page 05*

The BOC Facility Principles document, most recently updated in 2015, describes rules and regulations governing the handling of sensitive information. The document does an excellent job of identifying not only what type of information is required to be protected, but offers consideration as to the "whys" and "hows" of sensitive information.

For example, while athletic trainers know that data collected from preparticipation exams are part of a confidential medical record, the BOC Facility Principles document also suggests considering how communication about storage and handling of confidential patient records with employees should occur, how it is documented and the responsibility of each athletic trainer to assure that the documentation is secure.<sup>5</sup>

The BOC also published the Guiding Principles for AT Policies and Procedure Development that provides a privacy and confidentiality policy worksheet for athletic trainers to use as a guide for writing their own policies. The worksheet addresses all of the important items to consider, and in particular reminds athletic trainers to have policies in place with respect to communication of PHI to nonmedical personnel (sport coaches, performance coaches, academic advisors, etc.), the release of medical records and rules regarding access to athletic training facilities by nonpatients.<sup>6</sup>

Lastly, many athletic training regulatory boards specify within their rules and regulations the responsibility of the licensed (or certified) athletic trainer regarding patient confidentiality. Florida, for example, in Chapter 64B33-4.001(7) (d) Standards of Practice reads as follows:

"A licensed athletic trainer shall preserve the confidentiality of privileged information and shall not release such information to a third party not involved in the patient's care unless the patient consents to such release or release is permitted or required by law"<sup>7</sup>

New Jersey defines confidentiality in a number of areas within their existing professional statute for athletic trainers. In fact, New Jersey's language proactively includes confidentiality terms relative to telemedicine, including a responsibility to report when a known breach of confidentiality occurs, and reads as:

"Written privacy practices required by (a) above shall include privacy and security measures that assure confidentiality and integrity of athlete-identifiable information. Transmissions, including athlete email,

prescriptions, and laboratory results must be password protected, encrypted electronic prescriptions, or protected through substantially equivalent authentication techniques."<sup>8</sup>

In summary, ATs are health care professionals who share the responsibility of protecting the privacy of patients' medical records. The importance of carrying this task out are reinforced in numerous professionally developed documents as well as in the standards of professional and post-professional education. Each and every athletic trainer is expected to adhere to the standard of care from both an ethical and legal perspective. §

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# Considerations for Developing a Transgender Policy

BY DANI MOFFIT, PHD, LAT, ATC, AND AMANDA TRITSCH, PHD, LAT, ATC  
NATA LGBTQ+ ADVISORY COMMITTEE

**D**uring the 2019 legislative session, more than 200 anti-LGBTQ laws were active in state legislatures, including more than 20 bills attempting to ban participation by transgender athletes in sports, particularly transgender females.<sup>1</sup> One such bill went as far as banning transgender female athletes not only in the high school, but in the collegiate setting, and was signed by the governor.<sup>2</sup> This law is under fire and the state is being sued by the American Civil Liberties Union for violation of Title IX, among others.<sup>2</sup>

Instead of stigmatizing these athletes, participation in sport requires policies to be written and adhered to; however, the younger the athlete, the more challenging the policy creation. Current interscholastic transgender policies are insufficient and impractical because they tend to mirror the National Collegiate Athletic Association (NCAA) or International Olympic Committee (IOC), which were written for adults and, therefore, force medical treatment on transgender minor athletes, ignoring the scientific differences between adults and children.<sup>3</sup>

In addition to federal, state and local laws, the athletic trainer must be aware of the applicable policies and procedures created by governing bodies for athletic organizations. These often offer clear criteria outlining transgender participation in sports. One “level” of participation doesn’t necessarily dictate to other levels; as an athlete moves through the tiers, the policies may change and have different requirements for the athlete.<sup>4</sup>

The National Federation of High Schools (NFHS) is the overarching entity for secondary schools throughout the U.S. and primarily offers regulatory guidance and administrative support. Each state and Washington, D.C., has its own state-based association and is able to set the rules and regulations for athletics specifically meeting the needs of student athletes.

At this time, NFHS has not required specific rules or regulations regarding the participation of transgender individuals in high school sports. Instead, it recommends that each state develop

districtwide policies in accordance with applicable state laws focusing on key issues facing transgender patients. This creates difficulty for the AT because each district may have its own policy although interscholastic events may occur between districts.<sup>4</sup> However, it is imperative to have policies in place so the AT has the ability to better serve the student athletes in their care. More information can be found at [www.nfhs.org/articles/transgender-students-participation-in-school-sports-access-to-facilities](http://www.nfhs.org/articles/transgender-students-participation-in-school-sports-access-to-facilities).

Washington was the first state to formally adopt a policy regarding transgender athlete participation in 2007. The policy allows students to participate “in a manner that is consistent with their gender identity, irrespective of the gender listed on a student’s records.” Currently, six states have no formal policy regarding participation related to gender identity, and 10 have discriminatory policies that limit participation to sex assigned at birth or proof of surgical intervention. Eighteen states and Washington, D.C., currently have inclusive policies that don’t require hormonal or surgical intervention. A comprehensive list of each state’s policies and their level of inclusivity can be found at [www.transathlete.com/k-12](http://www.transathlete.com/k-12).

If a policy does not currently exist in the state or school district, consider the following necessary components to develop an inclusive transgender athlete policy:

- Clear statement regarding eligibility
- How to notify school/governing association
- Challenging or reviewing eligibility
  - Clear delineation of who is included in that process
  - Specific timeline for process
  - Appeal process with timeline
- Statement of confidentiality
- Locker room/bathroom/shower accessibility
- Name and pronoun language
- Communication to ensure compliance at other schools

## CASE SUMMARY

### HOSPITAL ALLEGEDLY FIRES NURSE FOR WEARING MASK

These unprecedented times have produced intriguing legal situations, often involving health care professionals. Recently, health care workers were reportedly suspended in California for refusing to treat certain COVID-19 patients. In addition, according to media reports, nurses have been fired for wearing medical face masks in response to a supervisor’s direct order not to wear them. In at least one case, this latter situation has resulted in the nurse filing a lawsuit against the hospital.

When COVID-19 began spreading across the United States, the nurse, who had been employed by the hospital for more than five years, was working in the cardiac care unit, an ICU unit of the hospital.

Although the nurse didn’t wear a droplet isolation mask all the time, they were wearing one while putting an IV on a patient. The nurse claimed they were trying to maintain some level of barrier between them and the patient. According to the nurse, the supervisor approached them and allegedly told them to take off the mask because it could cause fear and panic among the staff and patients.

After the nurse reportedly questioned the supervisor about that assertion, the supervisor coordinated a meeting with human resources. The nurse said they provided a written statement to human resources, voicing concern about being asked to take the mask off. After submitting the statement, the nurse said they were fired and told that their health insurance would be immediately terminated.

The nurse said they didn’t place the mask back on their face after being told to take it off. According to media reports, the nurse said they were protecting themselves, patients and family. The nurse’s attorney asserted that the firing came at a crucial time for health care in the state and country, maintaining that it was the worst thing any employer could do during this time.

The hospital issued the following statement, “[The hospital] is unable to comment on matters related to the employment of a particular employee. However, we can assure the public that the safety of our patients, visitors and co-workers is our top priority. [The hospital] is

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## **FIRED FOR WEARING FACE MASK, *continued from page 07***

following [Centers for Disease Control and Prevention] guidelines on infection prevention and infection control including the proper use of face masks and personal protection equipment.”

The nurse noted that the hospital had adopted its policy based on CDC guidelines. That policy, the nurse stated, allows hospital employees to wear masks, such as the one the nurse wanted to wear and was fired for wearing against orders of their supervisor.

The nurse’s attorney stated they were seeking \$75,000 in damages.

It is unclear what the next stages will be in this particular litigation. In theory, the case could be settled, dropped or decided at a trial.

Ultimately, if this case proceeds to trial, the essential issue will be whether the hospital had just cause to fire the nurse. §

Specific to transgender participation, both Washington and California’s policies provide the process by which a transgender student can be fully included on the gendered team of their choice.<sup>3</sup> Creating a policy that mirrors the high standards of these two states would include the following:

1. A transgender student who seeks to play on a gendered team that doesn’t align with their birth sex must contact the school indicating such desire.
2. The school must then notify the appropriate state athletic association, which will review the request.
3. The state’s Gender Identity Eligibility Committee would review documentation from the student, peers, parents and medical professionals to confirm the gender identity expressed by the student.
4. If participation is granted, it is automatically renewed each season.
5. All documentation shall be kept confidential.<sup>3</sup>

The Gay, Lesbian & Straight Education Network has created a model high school athletics policy that is easily adaptable for school districts. This model policy allows districts to adapt to the needs of the athletes while maintaining the integrity of sport for all athletes.

A potential concern following establishment of a state or district level policy is the process regarding challenges to student athlete eligibility. Due to dramatic differences in how eligibility is

## **CONSIDERATIONS FOR DEVELOPING A TRANSGENDER POLICY, *continued from page 07***

determined, the process of who needs to be informed and how that information is delivered, there exists a wide range of ways to challenge participation eligibility.<sup>4</sup> In New Jersey, for example, an eligibility challenge must come from a member school within the association,<sup>5</sup> whereas in Nevada, “any determination made pursuant to a regulation adopted by the association may be appealed by an aggrieved pupil or school.”<sup>6</sup> In essence, any student who feels they have personally suffered as a result of a transgender student participating in athletics can challenge the transgender student’s eligibility.

An inclusive policy, reflective of the commonalities and strengths of the participation policies of Massachusetts, Washington and California, should be what states strive toward.<sup>3</sup> The policies implemented by these states include that no student shall be excluded from or discriminated against participation in interscholastic sports on account of gender identity.<sup>4</sup>

### **Role of the Athletic Trainer**

In addition to providing a districtwide policy, ATs need to consider their role with transgender athletes. ATs are health care professionals and should be held to a high standard when treating all patients. One place ATs can make an impact is by creating a Safe Space facility. By increasing visibility of support through signage or Safe Space stickers, the athletic training facility demonstrates support for all athletes, transgender or not.<sup>8</sup>

### **Ethical Concerns**

According to the NFHS, there are benefits of participating in athletics for youth,<sup>8</sup> including better education outcomes, lower rates of mental health issues and post-high school success, among others.

A study by the Pew Research Center in late 2018 found 70 percent of all teens, not just those who identify as LGBTQ+, age 13 to 17 consider anxiety and depression a “major problem” among their peers.<sup>9</sup> Nearly half of American youths struggle with a mental illness before turning 18. In a 2018 study of transgender high school-aged youth, 33 percent reported non-suicidal self-harm and 18 percent reported suicide attempts within the past year.<sup>10</sup> This highlights the importance of patient-centered care, regardless of the patient’s identity.

ATs know that physical activity helps reduce mental health concerns. However, epidemiological research suggests there are

decreased levels of physical activity and sports participation in transgender individuals when compared with cisgender individuals.<sup>11</sup> This is usually due to poor access to inclusive environments. Many transgender athletes have negative experiences with competitive sports due to the restrictive nature of the policies surrounding participation. Some transgender people experience stigma, transphobia, prejudice, discrimination and violence as a consequence of their gender identity.<sup>11</sup> Transgender people are more likely to avoid situations when they are afraid of being harassed, identified as transgender, or “outed,” such as in clothes shops, public toilets and gyms.<sup>11</sup>

Physical activity becomes an especially important variable to consider due to the reported high prevalence of depression and anxiety in the transgender population, which may be managed successfully with increased access to physical activity and sport. The Human Rights Campaign shares that LGBTQ+ youth thrive when participating in sport, including but not limited to: feeling safe in the classroom, not feeling depressed in the last week and not feeling worthless in the last week.<sup>12</sup> When transgender students are excluded from participation in athletics, they lose the opportunity to experience the associated positive outcomes. More importantly, these students often feel they aren’t allowed to be who they really are.

All ATs should be concerned for the patient’s health, safety and well-being. Creating a policy for transgender athletes teaches teammates, coaches and parents to learn compassion, empathy and caring. §

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### Recommended Components of AT Clinic or Facility Policy

- Statement of non-discrimination inclusive of sexual orientation and gender identity
- Definitions and usage of appropriate language (i.e., transgender vs. transgendered)
- Visible Safe Space or similar facility designation
- Collection and appropriate use of preferred names and pronouns
- Communication with parents or guardians about using student's legal name and pronoun corresponding to sex assigned at birth unless student, parent and/or guardian has requested otherwise (privacy protection per FERPA and HIPAA)
- Sources of law establishing the legal rights of transgender students
- The rights of transgender students regarding participation in:
  - *School athletics programs*
  - *Physical education courses*
  - *Extracurricular activities*
- Access by transgender students to restrooms, locker rooms and shower rooms
- Housing and other issues during sports and extracurricular activity road trips
- Dress codes and their applicability to transgender students and student athletes
- Strategies for communicating transgender policies to all school district constituents

### BONUS BLOG CONTENT

+ Learn more about transgender policies and ethical and legal considerations in a NATA Now blog series about LGBTQ+ patient care at [www.nata.org/blog](http://www.nata.org/blog).

## CASE SUMMARY

### INJURED WRESTLER'S CASE AGAINST AT DISMISSED

An insured athletic trainer contracted to provide services at a high school wrestling tournament was alleged to be negligent in moving an injured athlete without a spine board or cervical collar. Because the athletic trainer was insured and defended that they acted within the standard of care, the athlete's counsel had difficulty securing a causation expert against the AT.

The athletic trainer was providing services at the wrestling tournament as an independent contractor under verbal agreement that their responsibility was to assist with sports medicine duties during the wrestling match.

An athlete participating in the wrestling match was injured after a "stack" wrestling maneuver that caused increased neck flexion and discomfort. The athlete remained immobile and face-down on the mat following the maneuver.

The referee working the match immediately signaled for the athletic trainer, who responded right away. The athlete complained of numbness and tingling in his left arm and dizziness. He had not lost consciousness, did not exhibit any abnormal breathing and was alert and oriented when questioned by the athletic trainer.

The athlete was moved with assistance to a chair. He was then transported without a spine board or cervical collar by local emergency medical services to the community medical center.

A computer tomography scan and MRI of the cervical spine revealed a compression fracture of the C6 vertebral body with an avulsed fragment at the anterosuperior corner.

The athlete underwent a posterior cervical fusion without complication. He was discharged to his home in a cervical collar.

After three months, the athlete no longer had any numbness, tingling or pain in his neck or

upper extremities. At six months, he could return to contact sports. Within nine months, he regained full extremity strength and full range of motion in his neck and was released to return to contact sports including wrestling. No further follow up was needed.

The athlete alleged the athletic trainer was negligent in transporting him between the mat, chair and EMS, but the defense maintained that the athlete's damages were the result of the initial injury during the wrestling match and was not exacerbated by any action or inaction of the athletic trainer.

The athlete's counsel had difficulty securing a causation expert against the athletic trainer. The court granted the defendant's motion for summary judgment, and no appeal was filed.

There was no indemnity paid in this case. §

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