



## 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

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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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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).

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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