

ATA's E&O Insurance: Contradicting Professionalism and a Potential Hazard

By Philip Auerbach

Editor's note: The following text originally appeared in a slightly different version, on Jill Sommer's excellent blog (<http://translationmusings.com/>). She has graciously given us permission to reprint the article, and Philip has updated his text a bit. Thanks to both Jill and Philip for making this invaluable information available to readers of e-NITA!

A bit of background: Many members of the American Translators Association (ATA) have discussed the importance (or non-necessity) of carrying errors and omissions (E&O) insurance for protection against potential lawsuits. There are many differing points of view on the issue, and the following is one of them. Philip Auerbach, President of Auerbach International Inc., sent the following letter to the ATA's Business Practices list (an e-mail list where members of the ATA can exchange ideas and advice about business-related issues).



Dear fellow ATA members:

I want to bring to your attention an issue that has arisen with Lloyds, the ATA's Errors & Omissions insurance carrier, as it affects any LSP or translator... and similar issues that are probably in all other E&O insurance policies that anyone carries.

An issue arose with a long-time member of the ATA, an LSP with over 15 years' experience, which I directly learned about. For the first time ever, this language service provider (LSP, aka a translation agency) had a major dispute with a client that resulted in an insurance claim through Lloyds. The identity of the LSP (which we will call ABC) and its client are not important. What is important is how the insurance company reacted... and how this will impact you.

An agency or a translator strives for a reputation of producing excellent quality with professionalism. When an agency or a translator makes a mistake, one of three remedies is commonly proposed:

- a) a discount on that project
 - b) a refund of any amounts already paid
 - c) a compensatory project of a similar or greater amount.
- In this case, ABC did make some mistakes – apparently, its first-ever serious breach of procedures – and immediately arranged compensatory projects with its client for around \$12,000. Out of integrity, this was apparently more than the value of the mistakes themselves. However, after further investigation and after ABC delivered (most of) the compensatory projects, this long-term client then told ABC that it wanted compensation of an additional \$30,000 for additional expenses incurred. At that point, ABC invoked its insurance through Lloyds.

Unlike homeowner's insurance where one deals directly with the agent, ATA insurance must go through Lloyds' lawyers in New York. The lawyers chose to ignore ABC's terms and conditions, ostensibly because these would be counteracted in view of the admission of "errors." These ignored terms included that:

- a) all challenges to projects must be submitted within ten days of delivery; and
- b) all disputes were to be resolved through arbitration if the matter became serious.

In addition, ABC apparently stipulated both verbally and in writing to its client that methods the client insisted upon were likely to cause the very issues which necessitated its additional expenses for which the client wanted reimbursement.

Again, Lloyds deemed all those terms and issues as irrelevant. More importantly to all ATA members, Lloyds' insurance has a clause (VIII b) which says, "The insured shall not, except at their [sic] own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Underwriters [Lloyds]."

In other words, if you as a responsible LSP or translator agreed to a monetary or in-kind settlement with your client – such as ABC's \$12,000 compensatory projects – per the

standard business practices of a), b) and c) above, Lloyds will not recognize that payment... and you will have to pay it again if insurance is invoked. And that, effectively, constitutes double compensation.

Ostensibly this clause is to protect insurers against collusion with your client or to avoid your setting a monetary "floor" from which the insurance company must operate. Those concerns are reasonable.

The ATA attorney, Jefferson Glassie, backed Lloyds in this matter and stated, "It is a common, standard, and accepted practice and term of insurance policies. Any arrangements for claim or damage reimbursement involving [ABC] are totally between the insurer and [ABC]. ATA cannot be responsible in any way for insurance claims or awards involving members insured under the Policy and is not responsible for [ABC's] conduct."

So, we as LSPs and translators are left with a situation where the sole E&O insurance policy that ATA offers to us violates our professional ethics and common business practices... and where the ATA executives and lawyers whose salaries are paid through our dues back the insurance company, and not their members. When ABC passed me Mr. Glassie's justification, I was appalled. To me, whether this is "standard insurance practice" is totally irrelevant:

- > It was standard practice for years in the US to deny the vote to women and Blacks.
- > It was/has been standard practice for years in the US to discriminate against Catholics, Jews, Blacks, women, Latinos, Asians, Gays, interracial couples and many others.
- > And it was standard insurance practice until this year to deny pre-existing medical conditions and certain coverage to children.

"Standard practice" does not mean a policy is right or is justified.

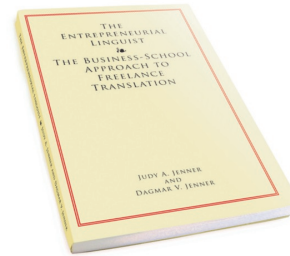
It is we members who pay the ATA executives and the ATA lawyer to defend our interests. These can include, for example, insisting on the insertion in the ATA's E&O policy of an exclusion for mitigating circumstances. And if Lloyds won't accept that, it behooves our ATA executives to find us another company's policy that will (in practice, if not in writing)... or perhaps to join with other associations to pressure a change collectively.

At present, you as an LSP or translator are expected to report ALL disputes to your insurance company, regardless of whether they escalate to a serious level. And if you act in good faith with your client and reach a monetary agreement first, you alone will have to pay that amount if an E&O policy is invoked; Lloyds or any other "standard practices" insurer will not cover that amount.

I cannot think of a single, experienced translator or LSP that at some time has not inadvertently passed on a mistake to a client. Beware. The next party caught in this breach of common sense could be you.

Sincerely,
Philip Auerbach

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Judy Jenner / Continued from page 1

I attended as many different legal procedures as I could, and was able to go to small claims court, drug court, traffic court, jury selections, jury trials, arraignments, etc.

Do you feel better now? You should. Every professional linguist has the opportunity to pass this exam if they are well-prepared. However, it is true that it is challenging – as it should be. Being a court interpreter is a very serious responsibility, and I think it's wise that the Supreme Court only certifies the best of the best. After all, would you want to be a defendant in a criminal trial with a mediocre interpreter?

Here are a few things that you should know or do before starting the process:

▪ **Enjoy legal issues and terminology.** If you don't like legalese, then being a court interpreter is not for you. Guess what? You will be surrounded by legalese all day. I was already a very seasoned legal translator, so going into court interpreting was a natural extension for me.

▪ **Being bilingual is the absolute minimum requirement.** I know that I am preaching to the choir here, but be reminded that being completely, fully, fluently bilingual is only the minimum requirement, and being bilingual does not mean that you are an interpreter.

▪ **Are you already a professional linguist, either an interpreter in another field, or a translator?** If not, then you've chosen one of the Holy Grails to enter the profession, and I don't recommend it. There are always exceptions, but setting your sights on court interpreting is usually a discouraging way to try to enter the language profession.

▪ **Understand that interpreting is a highly specialized acquired skill.** It involves many things, including excellent memory and the ability to quickly think on your feet, solve linguistic challenges in an instant, and take excellent notes, in addition to having a very deep knowledge of both languages and the law. It will take time to learn and build on these skills, and it's a challenge.

▪ **Court interpreting is not for the faint of heart.** You might have to interpret for defendants in criminal trials who have done things you'd rather not think about. And real court is not like TV – it's serious, but also sad, never glorious, and there's no neat wrap-up after 30 minutes. There are real lives at stake here, and if dealing with the gravity of court cases is something you don't think you can handle, then you might be better off interpreting in less formal situations.

▪ **Remember that you will be running your own business if you do pass and become certified.** I often get phone calls from laid-off professionals who think that becoming a court interpreter will guarantee them a full-time job. It does not: You will be a contractor to the courts, and there is no guarantee whatsoever on how many hours you will work. You will have to market yourself to obtain projects beyond the courts. If you are not prepared to maintain a website, acquire new business, attend workshops and seminars, do your own accounting and manage your time and resources, then court interpreting is not for you.

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An Intense Week of Learning: Connecting Worlds Health Care Interpreter Training

By Roxane Dow

This 40-hour intensive introduction to health care interpreting was taught by NITA Founding President Tracy Young at the University Medical Center (UMC) in Las Vegas the week of November 15-19, 2010. Tracy has been a health care interpreter for 20 years, a registered nurse for 15, and a health care interpreter trainer for the past 4 years. She recently passed the national test to become a Certified Medical Interpreter. Judy Jenner, NITA Vice President (who took the training in 2009) provided valuable assistance during the workshop as a language coach for the interpreting practice sessions, as well as providing helpful pointers on notetaking strategies.

As a translator who specializes in medical texts, I was looking forward to learning more about health care interpreting. I was a bit apprehensive, however, since I had not done any formal interpreting training since taking simultaneous courses back in 2000. It proved to be a very busy and productive week!

Before being admitted to the course, all participants had to pass a pre-test, a language proficiency test for both languages administered by phone. I passed this test several weeks before the training, as did all other participants.

As I expected, many of the 16 participants had my language combination (Spanish-English), but there was one person with a Japanese-English combination and another with Mandarin Chinese, Taiwanese and English, which made things more interesting. We also came from a variety of backgrounds: some were already working in the medical field and had health care interpreting experience, others were experienced court interpreters, some were conference interpreters, several had experience with a variety of interpreting types, and others were translators.

After coffee and pastries the first morning, we all introduced ourselves, and Tracy gave us a course overview. Afterwards, we took a pre-test (ungraded, of course), which showed us what we needed to learn about health care interpreting. Then the real work began. Each 8-hour day was divided into an opening session, a review and application session (used to go over the previous day's homework assignment), six modules, and a closing session. Each day we had at least one hour of interpreting practice, usually more. The course was intense, but also enjoyable, because every day we had at least one "nonacademic" activity that Tracy threw in to give us a break and get to know each another better. This was an excellent teaching strategy, because it helped us learn better by breaking the ice and providing a change in routine.

The main topics covered in the training are contained in the *California Standards for Healthcare Interpreters: Ethical Principles, Protocols, and Guidance on Roles & Interventions*. Each day the course focused on one of the six ethical principles for health care interpreters, which are: confidentiality, impartiality, respect for individuals and their communities, professionalism and integrity, accuracy and completeness, and cultural responsiveness.

We also learned standard interpreting protocols, including how to conduct a so-called pre-session and an actual interpreting session, including where to position ourselves, when to speak in the first person during the session, when to speak in the third person, how to interpret consecutively, and when to interpret simultaneously. We also learned how to control each session to keep the speakers' speed and length of utterances manageable for our different skill levels.

In addition, we learned about the roles of health care interpreters, who serve as message converters, message clarifiers, cultural clarifiers, and patient advocates, and how to perform in those roles.

Other topics covered were notetaking, sight translation, memory development, limited medical terminology (mostly in the homework), and an overview of health care interpreting as a profession, including national health care interpreter certification.

This probably sounds like a lot to cover in one week, and it was! The course was definitely intensive: a total of 40 class hours, plus about 1 hour of homework each day. But there were many benefits. The most important for me was developing my consecutive interpreting skills and techniques, which greatly improved my confidence in handling actual interpreting sessions. I am now one step closer to my goal of being both a translator and an interpreter. I also received 10 ATA CEU credits, which will help me meet the requirements for maintaining my ATA translation certification. The Connecting Worlds course also fulfills one of the prerequisites for taking the national CMT (Certified Medical Interpreter) certification test, an advantage for those whose goal is to become nationally certified.

For more information about health care interpreting, please contact the California Healthcare Interpreting Association (CHIA) (www.chiaonline.org), The National Council on Interpretation in Health Care (NCIHC) (www.ncihc.org), or the International Medical Interpreters Association (www.imiaweb.org). The American Translators Association (www.atanet.org) also has an Interpreters Division and a Medical Division that any ATA member may join. To learn more about the National Certification for Medical Interpreters program, please visit: www.certifiedmedicalinterpreters.org



Roxane Dow is an ATA-certified Spanish to English and Portuguese to English freelance translator with an M.A. in Translation from the Monterey Institute. She has 14 years of translation experience and specializes in medical texts, working out of her Las Vegas home office. She continues to hone her Spanish-English interpreting skills.



Note From the President



Hello NITA members,

Can you believe this is my last President's Note? Two years have flown by and it is time to elect a new President in March. More about the election process elsewhere in the newsletter... But you haven't seen the last of me! I hope to take on a role very much like the previous past president, Tracy Young, has had since she moved on. I will chair the bylaws committee and the nominating committee, and will be involved in northern Nevada professional development and social events.

One of the things I have noticed over this time as president is how few NITA members make the most of their membership. This prompted me to write the "Making the Most of your Membership" piece in this newsletter. My wish for 2011 would be that we all learn from what we have to offer each other and that we network more on the NITA site that we have done till now.

I would like to thank you for entrusting me with helping to run NITA over the past two years, and I am confident that in the next president's hands it will continue to thrive and grow.

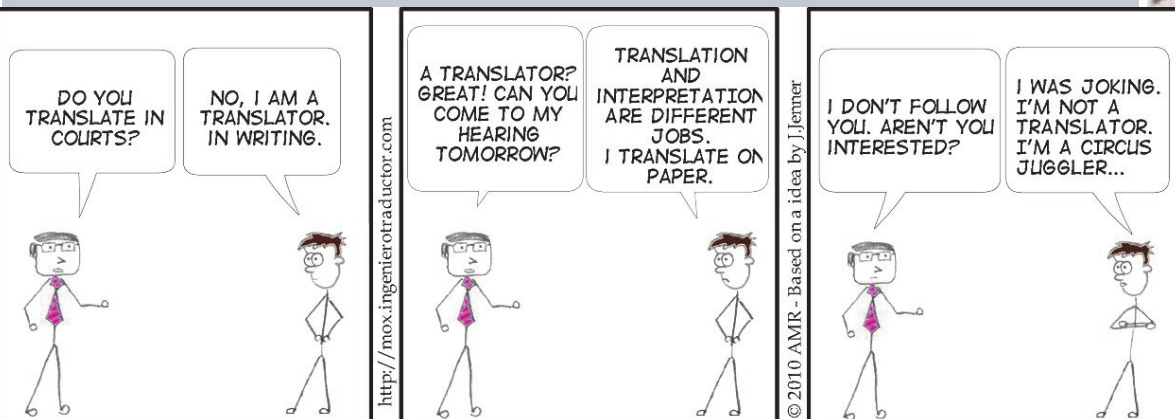
Karen Tkaczyk

Judy Jenner / Continued from page 2

Last but not least, try the following tips to help you improve your skills for the oral exam:

- **Cramming doesn't work.** Improving your interpreting skills is a long-term process. Make a commitment to dedicate a certain amount of time to it every day (or every week). I practiced simultaneous interpreting with my CDs in the car while driving. Be sure to pay more attention to the road than to what you are saying, though! If this is too distracting for you, try another approach.
- **Get a digital voice recorder.** I bought mine for less than \$30 at Office Depot, and it truly is my new best friend. Many times, I would feel that I was doing quite poorly during an interpreting segment, but when I listened to it and graded myself, my performance was actually quite strong. The opposite was true, too - I would feel very strong, but the recorded result would be mediocre at best. You really don't know how you did until you record yourself.
- **Get honest feedback.** Meet with colleagues and ask for their honest feedback. You want to surround yourself with people who have the ability to evaluate your performance and who will tell you the truth, even if it's not what you would like to hear.
- **Be patient.** This was tough for me, but learning and improving your skills will test your patience. You can't expect to remember new vocabulary immediately. Repetition and reinforcement are key.
- **Make vocabulary lists.** Don't know what a side-bar conference is? Look it up, and look up the translation, too. Build vocabulary lists and study them.
- **Read as much legal writing as you can - yes, even if it's John Grisham.** Actual court decisions and verdicts would be better, but try to surround yourself with legalese.
- **Be humble.** If you don't pass on the first try, that neither means that you are not a good interpreter (although it could) nor that the exam is flawed (it's not). The beauty of this exam is that you can take it again the following year, and many people pass it on the second or third try. If your scores are not even in the ballpark of passing, then it's time to take a hard look at your skills.

With that, I'd like to wish you the best of luck on your journey towards becoming a certified court interpreter in the state of Nevada!



Alejandro Moreno-Ramos is an electro-mechanical engineer and French and English to Spanish technical translator based in Madrid, Spain. In addition, he's also a cartoonist whose hilarious translation-related cartoons have been published online and in print, including in the ATA Chronicle. Alejandro has graciously donated cartoons for publication in e-NITA, for which we are very grateful.

To see all of his cartoons and meet the parade of lovable characters, please visit his frequently updated blog at: <http://mox.ingenierotraductor.com/>. You can reach Alejandro at: mox@ingenierotraductor.com.

Making the Most of your Membership

By Karen Tkaczyk

Come to Events

My top recommendation for all interpreters and translators who are trying to build their business and gain new clients through word of mouth would be to meet your peers. We all understand being too busy and having multiple commitments, and we all have to make choices about how to use our time. However, I suggest that if you are too busy to meet your peers and build your business, you are not serious about your business. To be successful and stand out from the crowd in this profession, you need to have a solid network of contacts.

If this hasn't persuaded you, then read on...

Many people only refer work to those they have met in person. This is particularly important for interpreters. Proven interpersonal skills aren't always crucial for translators, but still, many of us hesitate to work with people we only "know" electronically.

It is common among T&I freelancers to refer work to one another. Those of us who are well established have to turn down work because of scheduling clashes and overload. I suggest that you not think of your peers as competitors who will take work away from you, but instead as colleagues who can help you. Yes, we all hear tales about people who undercut prices to steal work away, but those are rare and much less common than "So and so recommended me last week, and I love this new client!" There are many more of us who get calls for jobs that we can't accept, and we're thrilled to have a pool of people to recommend. Besides the times when we are too busy, there are many ill-informed requesters—in my case, people who ask me to translate in the wrong direction or in a language or subject I don't work in, or people who ask me to interpret (I only translate). I need to refer people for jobs of some kind or another almost every week.

More obviously, those of you who have not attended events are missing out on all of the great training that comes every quarter as part of your membership perks.

If our usual event times don't suit you, please let us know, and recommend alternatives when you could attend. For example, if you are a freelancer and would love a weekday social lunch, we can arrange that. Thus far, many have preferred Saturday events, but we can change that if there is enough interest and willingness to help plan and run events.

Use the Forum

We have a wonderful website (kudos to Álvaro Degives-Más) where there is a forum for asking questions. This is visible only to members who have logged in, so that your beginner questions aren't open to the whole world for you to regret in five years when you aren't so green! Advanced questions are welcome too, of course. There are many NITA members who can help you with your queries and who are delighted to help people who are seriously trying to improve their skills and train themselves. Of course, some areas have a stronger base than others. If you want help with Spanish terminology for the court oral exam, there is a large pool. If you're interested in taking up Swahili, not so much. I receive many questions from members (Which software program should I buy for translation? What is it like to work for agencies? What do you think of this rate?) and I like to respond to people, but don't realistically want to spend an hour every week doing that. If you ask the question on the Forum instead, you may get ten answers, including mine when I have time to take a look. Those of us who get many questions really do want to help, but we have to manage the volume somehow.

To access the forum, go to <http://www.nitaonline.org/forum/membersforum/> and log in. If you need to reset your password, there is a reset request button. Feel free to read the old threads, and also to start new ones as soon as you are comfortable.

I hope this little piece will inspire some of you to set new goals for your involvement with NITA during 2011.

I look forward to seeing you!

Philip Auerbach / Continued from page 2

I have since learned that clauses in insurers' contracts cannot easily be changed or revoked. A contract in its entirety receives the approval of state insurance regulators. So, while it will be a long-term issue to get this particular practice altered, at the very least the ATA could issue a warning to its members that its E&O insurance can be hazardous to one's financial health. At present, they have no such warning, and the Lloyds policy is long, complex and a bit hard to understand. And that offending clause (VIII b) is not as apparent as in other insurers' policies.

Secondly, the ATA has offered Lloyds' policy for years and continues to support it. I have no idea how often they seek out alternatives, but clearer and friendlier policies do exist. And ABC felt that having to deal with Lloyds' New York attorneys (again, not a sympathetic claims adjuster) was a very stressful experience. Among other issues, it was not clear how hard the attorneys fought to defend ABC, even with the evidence it provided. The attorneys are not necessarily on your side; they are there to do what is most expeditious for Lloyds, which does not always benefit you.

Finally, I do not take the position that translators and agencies should have no insurance. My view is entirely the opposite. Since most translators do not carry insurance, the agency normally must, particularly if it serves Federal Government agencies and certain large corporate clients that mandate it. If translators make mistakes, the agency is ultimately responsible for compensation to the client, and insurance protects against large claims or unusual circumstances, such as the article describes.

I therefore favor E&O insurance, but after learning about ABC's experience, will be changing my carrier from Lloyds. I am leaning toward Philadelphia Insurance Company, and can recommend an excellent agent.

Philip Auerbach is President of Auerbach International Inc./Translations Express of San Francisco, a full-service, 20-year-old LSP that offers 80+ languages and handles most subjects. He has studied eight languages (to varying degrees); speaks English, French and Japanese; and has lived and traveled extensively overseas. You may reach him at philip@auerbach-intl.com or at (415) 592-0042, x 107.

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If you would like to share an article or event, please e-mail news to: vicepresident@nitaonline.org

My NITA Membership: Worth Every Penny

By Esther Patterson

When I moved to Las Vegas from Germany a year ago, I was ready to become self-employed as a translator and interpreter. I had my graduate degree in translation under my belt, and was highly motivated and ready to use what I had learned at university. Coming from the translation field, I was aware of associations for translators and interpreters. After all, the Federal Association of Interpreters and Translators (BDÜ) is the largest language professional association in both Germany and Europe, and is known for promoting quality work and working conditions. In addition, it offers the possibility of networking with colleagues, high-quality newsletters in every state, and a myriad of seminars and events. With that in mind, I started to gather information about the American Translators Association before I even moved to Las Vegas, and quickly found out about NITA. Since I hadn't been an association member before, my expectations were relatively low - and I was quite wrong!

I contacted NITA Vice-President and fellow German-speaking colleague Judy Jenner, a translator who seemed to be nearly omnipresent on the Web, to find out a little more about membership and what it entailed. Luckily, a NITA get-together was just around the corner, so I packed a pen and paper and went to the Coffee Bean and Tea Leaf to meet my Las Vegas colleagues for the first time and, if I was lucky, to pick their brains a little.

My surprisingly punctual arrival (a typical German habit which I have not inherited) gave me the chance to speak with Judy alone for a few minutes before the others arrived. During these few minutes, I collected more information on how to get my business started than I had ever dreamed of. Judy was extremely helpful, giving me the names and even addresses of places I needed to go to get my business licenses, tax registration, etc. Soon after, other colleagues joined us and, quite to my surprise, everyone was willing to share whatever information they had at hand that could help me. Ever since that meeting, Judy has been my friend, colleague and mentor, giving me great support as well as valuable information and a sporadic push to get me going in the right direction.

Joining NITA and attending this NITA get-together have proven to be the best career decisions I have ever made. I have been contacted by clients who searched the NITA Directory of Language Professionals for a translator or interpreter who suited their needs, and I have met the friendliest and most helpful colleagues, who have referred work to me, shared information with me, and listened to me when I needed to vent about an occasional rough patch.

The quarterly NITA get-together is a great way to get out of your home office and meet your fellow professionals face-to-face to network, talk about your experiences in a sometimes-foreign country, and discuss our wide range of clients. NITA offers valuable information on events and news relating to language and the language professions, as well as workshops and classes with renowned speakers on a variety of subjects, and of course, a chance to be listed on the very frequently visited Directory of Language Professionals (included in your membership fee, available at: <http://www.nitaonline.org/resources/directory/>).

Although many of these services are also available to non-members, the \$35 yearly membership fee is quite low and undoubtedly well spent as an investment in your future. I have come to the conclusion that being part of an association, in this case NITA, is something I would not want to miss. I can only assure others who are still thinking about joining that it is well worth spending some of your leftover Christmas allowance on a NITA membership, because your membership will both support the language professions and further promote the quality of translation and interpretation services, a NITA goal that is very dear to my heart.

Esther Patterson is a German, Dutch, and French translator and interpreter and owner of TransSense, based in Las Vegas. She received her graduate degree in translation with a minor in law from the Universität des Saarlandes, Saarbrücken, Germany. Esther is a second-generation linguist and was born in Brussels, Belgium. She is a member of the American Translators Association and a volunteer translator for Habitat for Humanity of Germany. Website: www.transsense.com; email: info@transsense.com



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NITA was founded in 2008 to help elevate the quality and availability of language services in the state of Nevada. Its goals include advocacy for the profession and political action for legislation (certification), among others. NITA offers its members professional development opportunities, free quarterly meetings with presentations, voting rights in board elections, networking and much more.