



Jon Kec

Welcome to Chiropractical.

I'm your host, Jon Kec and on this episode, the crypt is open. Alright. Seriously though, inside are chilling tales pulled straight from NCMIC's claims files. They're not ghost stories. They're actual real lawsuits claims that prove. It doesn't matter how skilled or careful you are, even the best doctors may find themselves living inside a nightmare.

I'm Jon Kec, and this is Chiropractical,

and this is our annual Claims. From the Crypt episode, you'll hear three bone Chilling real Tales, where chiropractors who did. Basically nothing wrong still ended up having to defend their reputation, their license, and their livelihoods.

These aren't stories of superstition or urban legends. They're real claims, real cases pulled straight from our N-C-M-I-C claims vault. Our goal isn't to scare you. It's to prepare you because inside every haunting tale lies some truth. With the right knowledge and support, you can prevent your own story from becoming the next thing whispered about in the dark.

Or told on Tales to the crypt. At the end of the episode, please leave us a comment wherever you listen. Tell us about what stories shook you the most,

Jon Kec

To share these spooky stories, we're joined by two members of our claims department, Tom Caswell and Zach Meyers. Tom Zach, happy Halloween and how are you today?

Tom Caswell and Zach Myers

Good.

Jon Kec

So coming up on Halloween, what are the, uh, the plans in the households? We've got kids dressing up or are we avoid Halloween at all.

Tom Caswell

We're a big Halloween family. Uh, we, we have a, we live in a small little, uh, development with a handful of, uh, neighbors. Um, about 15 houses or so. A lot of, a lot of little kids in those houses though. So we, um, we have everybody come to our house before trick or treat. Bigger night starts, we feed them. I dunno, kind of a covered dish thing.

Bring your own covered dish. We bake some chili and feed the kids. And then at six o'clock, when it's time to start beggars night, I hold the kids back, all the parents leave. They go to their houses and man their doors. And then we send the kids out in the neighborhood and they trick or treat and then they come back to our house and we have fun until everybody wants to go home.

Zach Myers

We're usually a big decoration family. Again, we're expecting our first child in December, so this year we're a little, uh, subdued. Um, but, uh, we'll still hand out treats and stuff like that and, um, we look forward to it. It's just, it's a nice time of year too.

Jon Kec

So in our first, uh, claim from the Crypt today, we're gonna take a look at Trusted Friendship, a routine adjustment. But then a lawsuit that came out of absolutely nowhere. So tell us a little bit about Dr. Smith and, and kinda what, uh, that situation was that he faced.

Tom Caswell

Sure. Uh, Dr. Smith, uh, had been practicing in a small town for 33 years. Um, he established a, a good reputation as a kind and caring practitioner and just a general good person. Everybody thought well of him in the community. Um, he'd been treating this patient, Mr. Brown, I'll use that name for nine years, uh, for his, uh, chronic neck pain.

Um, no radicular or neurological symptoms, just general neck pain, uh, that, you know, he, uh. Had he had just came on from years and years of being hard on his bodies, a labor he built houses. So, uh, you know, the, the, you know, normal, chronic issues that comes from building homes for a long time and using your body, um, you know, and Dr.

Smith and Mr. Brown, they, they were, they, they didn't socialize together, but he, they consider each other's fr friends and, you know, they were friendly with each other when they saw each other out, uh, in the community. Um, and on the, on the, and so it kinda came as a surprise on

the last visit, um, after a brief exam and history, our doctor did his, his normal per usual treatment of, um, some, some heat massage, and then a then a, a diversified chiropractic manual adjustment, uh, to the cervical spine.

Uh, you know, everything went great as normal. Tolerated the treatment well, uh, you know, to the, you know, they laughed and joked on the way to the, uh, door when our doctor walked him out to the, to the lobby, to, to, you know, to send him out. He normal, same kind of joking that they always do, and everything was going great as far as, you know.

Dr. Brown, uh, or Dr. Smith thought. And then, um, you know, that's the last I kind of heard from, from Mr. Brown until six months later when a sheriff showed up at his, his clinic and, uh, hand-delivered him a lawsuit. Um, and where once Dr. Smith started, or Dr. Smith started looking at the lawsuit, he realized that the um.

The, the claim was that after the last adjustment that went great, uh, the last adjustment that, uh, Mr. Brown's now saying that he screamed in pain so loud after that last adjustment, the entire clinic heard it and stopped what they were doing.

Jon Kec:

We'll, we'll probably talk about this here in a little bit. Some of the, maybe the, the red flags or, or things that may have come up along the way that, that Dr. Smith may have overlooked at, at the time, or not noticed, but that six month gap between visits. Do you happen to know offhand? Is that normal for the way Dr. Smith and Mr. Brown's treatment relationship went?

Tom Caswell

He came, he would, no, he would come in as needed. So there wasn't a, there wasn't a treatment plan, it was just, you know, hey, when he wasn't feeling good or whatever, he usually came in a couple months between, so it was a little bit, maybe longer than normal, but nothing that, you know, keeping Mr or Dr. Smith up at at night thinking when, when is Mr. Brown coming back again? It was just, you know, normal thing, didn't think anything of it. Um, so he comes in or, so he is reading the lawsuit. And the, the allegations against him in the lawsuit are, it says that he caused a C five, C six, uh, disc herniation, uh, that resulted in surgery, tremendous amount of bills.

And, uh, Mr. Uh, Mr. Uh, brown is no longer able to, um, to work ever again. Uh, as a laborer, he can't build homes anymore, so he's got medical bills and lost wages, and that's what's claiming. And, um, you know, it was a shock to, to Dr. Smith. He's like, he had no idea that occurred. And now. Also along with that lawsuit is an affidavit of Merit from an expert that says, yes, Dr. Smith did everything wrong in his care and treatment of this patient and, you know, caused this injury. Um, and it was just a complete shock, uh, to Dr. Smith and, you know, threw him, um, again, an old friend that, you know, didn't reach out and, and, and contact him after this alleged bad adjustment occurred. Um.

Which is pretty normal when we, when we hear that, that you know, that, you know, a, a patient that when there is an event that occurs in the office, we usually hear it right away. The doctors hear about it right away. So, you know, coming outta the blue was just hit him like a, like a, a wall. I guess.

He hit a wall.

Jon Kec

Do you have a, an estimate on that? Like what percentage of claims are, are more the, what you said the norm, where it happens, the doctor knows within, uh, you know, the day, five days a week, whatever a normal timeframe would be, versus ones that are like this, it kind of comes outta the blue six months, a year close to that two year statute limitations in a lot of cases. How often does something like that happen?

Tom Caswell

I don't know how often it happens, um, but I can tell you. Typically when there is an adverse reaction and it's a patient that they have a, a good relationship with, the doctors know about it right away. Those patients are calling right away that next day, Hey Doc, something went wrong in that last treatment.

Can I come back in and can you, can you fix me up? Or can we, you, what's going on here? It's just not right. They hear about it. Uh, and, and you know, those are ones that, okay, maybe, maybe there was an adverse reaction during the treatment. But when you don't, when the doctors don't hear about it or don't hear from those people for a long time and just ghost them and they're not calling and saying, Hey, what happened here?

Can we work on what's, what's going on with these issues? And they just suddenly get the lawsuit. I don't know about the frequency, but the, it's immediate red flags for us as claims reps. You know, that, uh, there's prob there, there may or may not be a real claim here or, or something that we caused. Um, so that's, that's the I guess the thing I picked up, up when I first, you know, got ahold of this case, majority of times, the doctors have some indication, but again, there's not, there's no way to know for sure. Percentage wise, it'd be hard to say, you know, what, what, uh, you know, how to actually quantify that.

But, um, it really, it can vary. But I say majority of times, sometimes they're aware that something, you know, may have happened if there's a noticeable issue at the treatment.

Jon Kec

So where does Dr. Smith go from here? When the sheriff shows up?

Tom Caswell

Yep. He called NCMIC. NCMIC right away, uh, which is what you need to do. Um, call NC Mick right away when something comes up and, uh, re report it. E whether, 'cause we, we wanna hear from you as soon as anything happens. Uh, we, we can, our job is to not just help you with a claim that comes in, but, you know, help you prevent claims from coming in.

So call us, let us know. We'll try and help. Uh, but Dr. Smith called us right away. So we got, we got, uh, going right away on it. We hired an attorney and started gathering medical records, um, you know, to start investigating the scene. You know, what happened here? What's really going on? Um, you know, disc herniation cases are, um, typically defensible.

it's not a, having a herniation is not a contraindication to treatment. Uh, you know, it's a, it's a, the chiropractic adjustment, the sound you hear, um, it's a audible release. It's a decompressive. Force. And to have a disc herniation, you need a compressive force, an axial loading force. So, um, we know right away when just nature of allegations the way it happened.

This is, something's not right here. Um, but once we, once we did get the records and we saw that, you know, the, the neck, you know, as, as we knew it was chronic neck pain, there's degenerative disc disease in about every level of the guy's Mr. Brown's neck. Um, the whole spine, um, there were bulges about every level of the cervical spine.

C five C six did have a small herniation. But once we got the op report, started reading the, the operation report from the, the orthopedic surgeon that performed the procedure. The need for the surgery wasn't the disc herniation, it was the shaving off of the osteophyte formations that had developed on that, at that, at that level.

And those bony spurs were the ones pressing on the nerve, causing his, his real pain. Um, so that's what the need for the surgery was. Obviously a chronic degenerative condition that a single chiropractic adjustment did not cause we didn't, A single adjustment can't cause bone. The, the, the grow, like the spurs, the grow.

So, you know, we immediately postured this for trial. Uh, our experts were all supportive, of course, of the Karen treat, but Dr. Smith had provided, um, you know, we obviously had surgeon to say what the true need for the surgery was. And, you know, we took it to trial and, um, Dr. Smith was. Adamant he wanted to clear his name.

So we, we did, we took it to trial, we took it to a verdict and, you know, we defended, defended the case. Um, but, you know, this is a small town. This is a friend of his, uh, Dr. Smith. So it's, you know, or at the time it was a friend of his, they're not friends anymore, but they were, at the time, it was a friend of his, it caused a lot of sleepless nights, um, for him.

Uh, you know, and just a, just a nightmare. And, uh, you know, it's just, you know, it was a, we live in a litigious world and. When people have medical bills that come up unexpectedly, they can't work anymore to pay for those medical bills or everything else in the future. They're looking for any way for them to, to try kind of survive.

And that's what that was. Mr. Brown's motivation is, I need to find money. And he was hoping Dr. Smith would be the way and, um, the medical evidence helped us prove it wasn't, besides the fact he didn't do anything wrong.

Jon Kec

What about, you mentioned with the original, uh, notice of suit, there was also an expert witness

Tom Caswell and Zach Myers

Mm-hmm. Mm-hmm.

Jon Kec

So with something like that, when they, when they have that strong, I'm gonna use air quotes, strong support, um, from another provider saying that what is being alleged happened. I understand we bring experts in of our own right.

And we build a case to refute that. But I imagine as a doctor, Dr. Smith probably. That that hits a little closer to home when you've got another chiropractor saying you screwed up.

So what are kind of both sides of that? How do we work through with a doctor trying to kind of handle that professional hit that comes in, but then how, also, how do we refute that legally?

Zach Myers

Professionally, I guess you just tell, tell the doctor first and foremost that this expert may not have all the records. At their disposal, they may be hearing from an attorney that says, Hey, here's what, here's our side of it. Here's what we are saying occurred. If this happened, would this be a breach?

And would this be, did this, would this have caused the injury? And those experts, even though clearly they, that the, a chiropractor, a professional chiropractor would know, should know that osteophyte formation is not occur from a single adjustment. Uh, but from a longstanding time, they know that, but you know, based on the representation that they're hearing from the attorney.

Based on what you're telling me, I'm able to sign that off, you know, um, then at their depositions when, when we're able to finally confront them with our attorneys and, you know, actually get in, get in their faces, they, they can see it a lot real quick, real fast. 'cause they have to, because that's the way it's, but, um, you know, unfortunately that's the way the, the, the system set up is that, um, they don't necessarily have to be.

Held to a, a standard where, you know, we'd like to see maybe, I guess as a, from a defense standpoint, uh, but again, it's based on representations that they're told and we, and we let the doctors know that and they're okay with it. Go ahead. The other thing we do too is obviously we, we, we deal with this all the time and we can kind of give them some, um, understanding as far as what we see to get them, um, a different view that, hey, just 'cause somebody's saying or there's an affidavit saying this, um, doesn't necessarily mean it's, uh.

You know, uh, one gonna impact our ability to defend this case 'cause we're gonna get our own experts. Um, again, as Tom mentioned, sometimes they may be limited on the records that a plaintiff attorney provides to 'em. So they may make a, an opinion based upon literally, you know, uh, whatever's provided to them.

And then when they get, um, additional information, we are able to talk to them. Um, sometimes those opinion opinions change.

Um, so again, that's a key role we have too, is just kind of educating, um, our insurers and our doctors to make them as comfortable, um, with the process. Again, we deal this all the time, um, or this is new to every, you know, our doctors, which is scary, but we try to make 'em aware of what we've seen and, um, you know, how, how we'll approach it in the future.

Jon Kec

Luckily, and knock on wood, hopefully never had to deal with this, but I, I can't imagine all the ramifications that come to mind. Right? There's the professional side, there's the personal side, there's the livelihood and future side. So. You know, I, I can only imagine the, the amount of things y'all have to, to kind of juggle, right? From a conversational perspective as well as defending this case and, and ultimately trying to win it for the insured whenever possible.

Tom Caswell

Especially when you have somebody like Dr. Smith practicing in a small town where your rumors fly in those small towns, you know, when there's not, there's not a lot of news. So when there is something like this, it's, it can hit the news, it can hit the, the, the local gossip circuit, I guess. Mm-hmm. Um, and you know, a lot of doctors worry about how that's gonna impact their, their clinics and their, and their, um, the, their, what's gonna happen there.

And we tell them, you'll be fine. Trust me, you, you'll probably have more. More traffic. Um, and that, that's what happens in the vast, vast majority where even these small, small towns where, you know, maybe as a prominent member of the, uh, of the community is making an allegation still, um, they're okay usually.

Jon Kec

In our second claim from the Crip today, we're gonna take a look at what seemed like kind of a, a routine decision that I think a lot of us face. What do you do with a chronically late patient? And I know sometimes we make the decision to dismiss them from care. There's a process that's, you know. Probably best advised to follow, and I don't know if this doctor necessarily did that, so let's talk about that a little bit. But in this situation, whatever the process was, it did not go well. It led to a whole host of things, lies about the provider and the practice, online attacks, and ultimately a board complaint that could have altered the trajectory of this doctor's career.

Zach Myers

So we'll refer to our doctor as Dr. Jones. He's a well-respected member of his community, is a pretty large community. Um, his practice is located in a busy city. Uh, Dr. Jones always told his wife that he was a good, busy, he enjoyed practicing, kept busy. Um, he had great staff and patients.

That was, for the most part, he ran into a situation with a patient who had trouble missing appointments. Um, he's pretty, our insured, Dr. Jones was pretty lax in implementing any punishment for those missed appointments. Um, and he was kind of afraid of. Approaching the patient about those missed appointments.

Um, eventually he did work up enough courage to kind of approach him, explain to him how disruptive, um, his missed appointments were for him and the, and the office staff, um, and how important appointments were to adhere to for treatment plan, um, planning purposes, an optimal outcome for that treatment plan.

Um, unfortunately this visit didn't do much to impact the patient's, um, attendance and it kind of fell on deaf ears. Um, the patient continued to miss the schedule of appointments and Dr. Jones, again, as I mentioned, kind of hated conflict, but he decided to take a stand and he ended up having to dismiss a patient for optimal care.

Again, there has to be trust on both sides. The doctor patient relationship. If we're not, you know, adhering to treatment plans or patient's not coming to those appointments, you know, that potentially could impact this. We could be, you know, somewhat held, um, potentially responsible for not referring or, you know, things just come up where at some point it may make sense to dismiss a patient.

Um, so we, we've eventually sent out a letter. The doctor sent a dismissal letter to the patient.

Jon Kec

Can we talk about that process a little bit? what what does something like that look like when you are dismissing a patient? If, if situations vary, let's look at a couple situations, but at least in this case, What's that process look like?

Zach Myers

Yeah. So, uh, I mean obviously, generally speaking, doctors aren't DMI dismissing patients. They're your source of income. You wanna treat people, you wanna help people. But there are those situations where, you know, depending upon many or, or, or no reason specifically, again, generally, the, the, the, um, the outline for dismissing a patient is the doctor can dis dismiss, dismiss a patient for any reason or no reason at all.

Of course, again, as I kind of stated, doctors aren't dismissing patients just for no reason. Right. But there's a process to follow. So a lot of times we get calls about. Um, you know, patients who may be, uh, for whatever reason, the doctors don't feel safe treating, there could be red flags. Um, it is just not a good fit.

So in that situation, we have a discussion saying, Hey, you know, what would you like to do? We kind of explain to them as I stated, you can dismiss 'em for any reason, no reason at all. And the biggest thing is you just have to do so properly and properly involve sending that dismissal letter. Um, to the patient to formally end that doctor patient relationship, um, that way there can't be claims of abandonment.

That's the big thing we're dealing with when we're dismissing a patient. Um, so it's kind of a, a conversation. Again, it, it can depend upon the doctor's, um, you know, view if they think they can work through it, depending upon the situation. Um, you know, they dic, they dictate care, not the patient, the doctor does.

So if they feel they can work through it, have a discussion. If it's kind of an awkward encounter and they wanna continue to treat, um, that's something they can do. So we do our best to kind of guide them. Um, but again, the thing we like to point out is if it's, if it's a, you know, a, a patient who you think is high risk, those are the patients who are most often or likely to complain.

something from their perception goes poorly again, increased pain, they're the ones that could probably ask for money back. Um, so again, it's just a conversation we have with our insureds is to determine, hey, is this somebody you want to treat? And, and if you don't, we, we, you can, we

Mm-hmm.

Jon Kec

So two things with that, just to, to make sure we're clear. When you say discuss with our insureds, that's something they can call in at any point if they feel like they have a problem with a patient, somebody, they need to just talk through the situation. Y'all are, are here to, to work with them through that, to give them kind of the conversation you just outlined.

And then if they make the ultimate decision to dismiss that patient and set that letter up, what are the points of that letter they want to make sure are highlighted and outlined going forward to do it the right way.

Zach Myers

yeah, the doctors or insureds can call us. Uh, there's no claim being opened. Um, it's just kind of risk management advice. Um, and, and we act, and personally I have a templated email. This is a pretty common call we get. Um, so the letter, we can send you a sample letter. Again, we always encourage people to contact their local boards or associations for maybe exact verbiage or, you know, uh, timing.

Some states want, you know, more timing as far as like urgent care, referrals, stuff like that. But our, our letter has basically everything you need, um, to formally or properly dismiss a patient. Um, you know, there's some odd things like, you know, you are supposed to send them by regular and certified mail.

If the patient does accept a certified copy, then that's not a big deal. But if they do place a copy in the patient chart, again, the goal of that is you're basically confirming they got the letter so that they, they then can't come back and say, Hey, I didn't know I was dismissed. And because I didn't know that my condition worsened and because my condition worsened, it's now caused a.

An injury to the point where if I was notified properly, um, I wouldn't have had this injury.

Jon Kec

I think we'll probably talk about this a little more when we spin back to Dr. Jones here, but when you say abandonment, are we talking accusations of malpractice, abandonment, or board based issues regarding abandonment

Tom Caswell

It can be both. Mm-hmm. It can be both. Mm-hmm. Um, I would say it's probably more likely in the board setting. Um, just because again, when you're looking at malpractice, a burden of proof would be pretty high. So again, malpractice, just briefly speaking, would involve them, you know, proving you, uh, the doctor didn't adhere to the standard of care.

Um, and that breach in that standard of care was a cause of the injury. So when you're looking at abandonment, it gets pretty, you know, you're getting pretty far down the line to say, because we didn't tell you, you were dismissed. Properly and you didn't receive treatment in a, whatever you feel is a timely manner.

There was a injury that resulted in a, you know, uh, uh, damages as well. Um, so it kind of gets a little bit far fetched. I'm not saying it's, it's impossible. You don't, again, I haven't seen one

personally. I don't top as, but um, I would definitely say the board matters are more likely. The ones I dealt with were board matters.

I mean, people complained to the board, they had to deal with the board and in this situation they had issues. 'cause they just. He just closed their practice and didn't communicate with people. I think it was around COVID times. Um, but board matters generally are more, more likely than a pl uh, professional liability lawsuit.

Um, 'cause anybody can complain to the board doesn't mean the board request is, um, legitimate, but generally the boards have to look into it. Um, so there, I'd say we would get a, you know, more likely on the board side.

Jon Kec

So what about Dr. Jones? So reached out to us, we got that letter ready. What happens next?

Zach Myers

Yeah. So, uh, and this is a risk of sending a dismissal letter, and that's when you call us, we'll talk through it, but the, uh, the patient was not happy to get this letter. Okay. Um, and because of that, she responded with a Google review. Um, and in that Google review, she said how rude and inappropriate the insured was.

And he, she included allegations that he called her fat, and that was part of the reason for the dismissal. Um, she followed up her Google review by making a complaint to the state board. Um, again, these patients will sometimes do that to, is sometimes their only avenue to, I guess, feel like they're, they're getting back at the, the insured.

Um, so at this point, that's when the, the, uh, Dr. Dr. Jones contacted us looking for advice. Um, at this point, we talked to Dr. Jones. About our ability to use our audit, legal defense endorsement. So we have an endorsement on our policy that helps you for professional licensing matters such as this. Um, and at this point, that's when we retained an attorney to help him draft a response to that board complaint.

Um, the attorney at that point, you know, uh, provided a response to the, the board that kind of clued them in, uh, clued them in on the reality of the situation. We didn't say any of that. What she was alleging is not true, and luckily that, uh, that, uh, board matter was eventually dismissed, um, and, and all was good there.

Now, regarding the social media posts that she left, the, the Google Review, we advise the, the insured to handle that carefully. We gotta be careful not responding to online Google reviews because of hipaa. Um, even though we wanna respond and defend ourselves is generally not a good idea. Um, unless, you know, our advice generally is to speak or, or have other patients submit favorable reviews, maybe bury that response.

But in this situation, because of the, the, I mean complete untruth of what the patient reported, we encouraged him to report it to Google. Um, and luckily in this situation, um, Google did take down this review so we can talk to our insurers with negative reviews about options. Um, you know, we may have to refer you to an attorney about potential ways to deal with that review.

Cause, uh, sometimes these c sites will or will not be, you know, uh, helpful in, in, uh, you know, people have the right to complain, you know, so, and uh, um, but in this situation, luckily the Google Review was, um, able to be taken down. Um, but this is just a, a good example of a, kind of a spooky, uh, story where you're doing everything right.

You know, you, uh, you handle the patient. You try to work with them and it can still end poorly, quote unquote, in the sense you have a board complaint, uh, bad Google reviews. Um, but again, that's where you'd want to contact us and we could kinda help you through the process. Um, it ended up pretty well for the doctor overall, um, outside of probably losing a little bit of a, uh, you know, a little sleep and a little, a little frustration with the process..

Jon Kec

All right. Last case for the day, and I'm gonna say I love this as an example. Um, the, the topic I think is very, uh, I, it's not something a lot of people think about. We did a really good job, I think with the first one covering some malpractice stuff. This one we're hitting more of the board based issues, but this last piece, I think it's an ever increasing problem, but it's not something a lot of doctors really realize is a problem, and it's from two different facets of this issue. So for this last one, let's, uh, let's talk a little bit about Dr. Jonson, beloved chiropractor in her community. In practice for a long time, but then got stuck in a bit of a rock and a hard place situation. I guess we'll say, at least it seemed at first with a really good friend who came into the practice, an accusation of sexual misconduct, and then ultimately some employment issues that she had to deal with.

So take us through what happened with Dr. Johnson.

Tom Caswell

Dr. Johnson had a great practice. She'd been there in their community for a very long time. Um. And she's such a good practitioner and involved in the community. The community, you know, gave back to her as well. And they, her patient load was, was overwhelming for her. So she started looking at an option.

She decided she's gonna hire an associate chiropractor, um, into the office. And then that led, you know, that led to a second associate and then a third, and she had a thriving practice that, uh, you know, where, where patients were coming in the door and loving it and everything was great. Uh, everything was.

It was perfect for her. Uh, almost, almost too. Perfect. Um, you know, and then, uh, you know, that is until one day where her best friend, uh, one of her best friends called sobbing and said, I just left the clinic. And the worst thing just happened to me. And she went into this whole story about how during the treatment she was, uh, you know, sexually assaulted by one of the associate chiropractors, one of the male associate chiropractors had, um.

You know, done something inappropriate to her. Um, you know, and our doctor, you know, she apologized profusely. I'm so sorry to hear this, and so, so forth. And I'll look into it. I promise I'll, I'll, I'll take care of it, make it right, whatever. And, uh, you know, she launched her own investigation. She brought the associate into the, into the office and say, Hey, you know, here, here, what just happened?

I just got this phone call. Here's what they're saying. Occurred. You know, what's going on here? And he, and the, the cut male cap's, like, uh, you know, I don't know what you're talking about. Your friend just came on to me, she tried to make a move on me. I had nothing. I didn't do anything wrong here. Uh, you know, and, uh, you know, that, that is his story.

And she had to, you know, she was distraught. I mean, she's like, oh, now I have my best, one of my best friends saying this occurred. I, I, you know, I, I kind of believe her. Now I'm this associate that I've worked with for all these. For these years is now saying that that's not exactly at all what happened, and it's just she didn't know what to do.

Um, and she finally decided she had to just believe in her friend and do what's best maybe for her practice. She met with a, an employment attorney, uh, went over everything with them and they, they did their, their advice on how to let the, the chiropractor go. And she fired the chiropractor and she called her friend and said, Hey, uh, you know, he said something completely different happened.

I believe you. You're my, you're my, you're one of my best friends and I, I just didn't want to have to look at him and, and question, so I fired him, got him out of my office, um, because of these allegations and,

And they, everything seemed to be good. Everything was going really well, uh, until about six months later, uh, when she got, she got a lawsuit, um, claiming that, um. Sexual assault from the chiropractor, uh, against the chiropractor. And then, ooh, spooky. I guess we're

So she, yeah, so she got this lawsuit, the sexual allegations lawsuit, the assault charges against the, the male chiropractor in the lawsuit. And the allegations at the clinic, which was also named in the lawsuit, her corporation, was that there was negligent hiring and supervision by her, by Dr. By Dr. Johnson. Um, you know, so, you know, so it was, it was, it was horrible. Um, and to top it off, uh, the, the, the male associate chiropractor. It didn't pay his malpractice premiums. They, they had no coverage. There was nothing there. He had no assets, no insurance coverage. He was on. He had nothing to, to help with this lawsuit.

So, uh, the focus was on Dr. Jonson's clinic, her and the clinic, and which, what her actions were as the employer. Um. You know, we, she reported to us NCMEC again, uh, right away. Um, we reviewed it, uh, the lawsuit, um, the matter, we have to matter when these allegations of sexual assault come in, um, and, and the, the, the things that surround it, um, there's some coverage concerns, um, just because.

The action is intentional by nature and intentional. There's no insurance policies that cover, uh, intentional actions. You can't intentionally do something to somebody and have insurance coverage for it anywhere. Um, so, you know, we reviewed the allegations against, uh, the, the clinic and because of the, the specific state laws 'cause it's state by state, uh, determination on on the way the laws, uh, apply with insurance coverage, we were able to, um, assist Dr. Johnson in the lawsuit with a defense under reservation rights. If a jury ultimately found something was done intentionally or something along the lines, there may not be coverage. Um, but we were able to assist in this case for a while. Uh, for, for this, um, you know, we, we investigated Dr. Jonson's the, again, the allegations against her in her clinic that we were defending were the negligent hiring and supervision claims.

So we looked at. What she did for her hiring process and her supervision. Luckily, she had a great pol written policy for her clinic, for her, um, for her employees on, on what's appropriate, what's

not, what to do, uh, which helped isolate her, um, that she's, she's not bearing her hand in the sand, but she's trying to, um, you know, show everybody what yeah, what needs to happen.

And then, um, she also, when she hired this chiropractor, she didn't just. Log onto the website to, to see if the license was active, she actually, or to see if there was any marks on it, which is another good thing to do. But she also looked, called the references of this chiropractor and, and got glowing remarks and, and had conversations with the people that the other chiropractor had worked with before.

And the important part was she documented all this, she documented her the checking her license status and, and all those things. She documented the phone calls, checking references in her, in her personnel file. Um, so then we, we had a great case for Dr. Jonson. She didn't, she didn't do anything wrong. She did everything she could.

No one said anything bad about this person. So how would she know? She brought some bad character in her clinic. She, there was, there's no way for her to know, so we had a defense for her. But this was Dr. Jonson's best friend and she just was not up to the fight to, to fight her friend for something that her friend said occurred in her clinic.

So she begged and begged for us to, to, um. To settle the case because you, she wasn't up for the fight at trial. And, and, you know, after, um, some discussion because of the reservation of rights, the meaning there may not be coverage. If, if the jury only found something, we were able to compromise and, and walk away with a very nominal settlement that would've been less than if we would've with the trial, um, paying her attorney.

So it worked out, um, for her, but it was sleepless nights for her and a nightmare for sure.

Jon Kec

So like, like I said in the beginning, I think I, I, I love this as an example because it, it, it looks at a bunch of different things that I don't think doctors think about. Right. Um, the, the pieces we've already talked on, the sexual misconduct allegations. I know conversationally, those are, those are on the rise. Would that be a fair statement?

Zach Myers:

Absolutely. Yep.

Jon Kec

Is it something where the. So I guess maybe before we go there, how, how the policy responded in a situation like this. So we were defending the, the corporation against the allegations of negligent hiring and supervision, you said? Correct. How does the policy, was that, again, was that more of a malpractice based claim? Is that more of a, the board had issues with what happened? Claim,

Zach Myers

Yes. So some states that's in some states against state to state specific step, but in some states that can be seen as the rendering of professional services. Even though you're not actually

treating a patient, um, you're still rendering a professional service for those patients by supervising your employees, that kind of thing.

So that's kind of where the coverage attorneys, 'cause we have it reviewed by coverage attorneys to see is this, does this apply in this state or not? Um. To make sure we're not making any mistakes. 'cause we wanna make sure we're, we're doing everything we can for our doctors as well. So once, once a coverage attorney says, yes, that's what's going on here, then, you know, then we we're, we move on and, and defend.

So that's what, that's what it was. But again, it's under a reservation of rights because there, there are, there it's not cut and dry. Yes. We're gonna help you with this a hundred percent. Um, you know, there's, there's, there's questions.

Jon Kec

And then last piece of this, it's something I feel like I have a lot of conversations with, honestly, both sides of the fence, employing doctors and employee doctors about. Is, is the kind of the situation you mentioned where the doctor separates from the practice. They, for whatever reason, do not continue their malpractice insurance and that leaves the practice then exposed in a way they didn't expect and probably aren't even aware of because they have no idea what that doctor did six months down the line. They have no idea. They're not covered for the time in their office anymore. I usually, and educate me if you guys have a, a different opinion or a better approach, I usually try to talk to employers and employees about having discussions about that on the front end, right? The either claims made or occurrence nature of the policy language in the contract around sep, where legally allowed language in the contract around separation and who buys tail coverage, how those costs continue, all that stuff. Is that something you, you guys would agree is, is a value to employers to make sure they hammer out all those details

Zach Myers

Absolutely. And there's one more thing they can do on that too, too on that they can, when you added a new employee. Um, and you say, Hey, do you have insurance? Can you prove that to me? And they show 'em a deck page that's active, an active policy. Okay. You hired 'em. They have an active policy. Great. You know, but you can take that a step further.

You can be asked, you can ask your employee to be added to their insurance coverage as a certificate holder. And what that does is that if there is a change, if they miss a premium, if they don't pay their, if, if they switch companies or they lower their limits, you, you're notified of by the insurance company as a, uh, they're, we're required if, if somebody's a certificate holder.

Tom Caswell

On one of our policies, if there's a change in the policy, we're required to let that certificate holder know there was a change in the policy. So the, as an employer, if you're a certificate holder on your employee's policies, you'll be notified if there is a change, if they miss a premium so that you, you, you're, you know, Hey, whoa, whoa, what's going on here?

You, you have to have insurance or you're not coming in and treating people in my, my clinic, um, kind of thing. So that's a huge, huge, uh, you know, you, you should be doing that for every employee, the certificate holder. 'cause again, it it, you're not paying anything. It's just you get

notified. You know, if something changes, which is huge 'cause um, we do see it, um, again, semi-frequently.

Um, I, I would say, you know, you're looking at, you know, your associates even like, um, assessed therapists, you know, they're good to make sure that they're paying for their premiums. 'cause unfortunately if there's not coverage, um, for the quote unquote, um, responsible party, uh, then they're gonna be looking at you as a corporation owner.

So a very important piece to kind of consider.

Jon Kec

And what about in a situation like this though, where that doctor has separated from the practice? Um, again, correct me if I'm wrong, I would assume generally the doctor is going to request their former employer be removed as a certificate holder once they've separated. So, best practices relative to keeping your responsible time the, the time the doctor was in your office insured. Long term, what would you guys recommend there?

Zach Myers

That's a good question. Um, I guess the biggest thing you know, is I guess you can encourage a occurrence policy. You know, again, you can't make anybody do that. Um, but that kind of prevents a whole tail issue if they were to leave your practice, not purchase tail. Um, I guess I, I don't know if you're notified if they don't purchase tail or, again, I dunno where this would look like as far as when they left.

Tom Caswell

Right. Because if they're gone. Um, I'm not sure how that'd play out. I don't know if Tom had a there. Yeah, I mean the only thing I, the only thing I would say is that as part of their, maybe their compensation package with your employee, if you offer to pay their premiums, so you know, Hey, I, I'm in control of what's going on here 'cause I'm paying those premiums.

Jon Kec

Well, and I think that's, uh, that, that's kinda the similar conversation to what I have, right? Is, is look at occurrence, consider it because of the simplicity. If not, again, we're legally allowed. Build in some language around tail coverage at separation from the practice. Who's gonna pay for it? How does that all work? But I think what you also mentioned is compensation packages, right? And that, that front end conversation, how are we gonna pay for this malpractice insurance? Because it's the only way to really protect yourself, I think long term that, that I, that I can kind of figure out. And I think the cost of. A few years worth of malpractice versus the cost of being the primary focus of a claim. The scales tip very heavily to that second side, so do it from the beginning and protect yourself. So Awesome. I just wanna bounce it off you guys. That's conversations I have fairly frequently and that's kind of usually how I explain it, so. Any other words of wisdom or, or things we should take a look at and maybe try to do a little differently next time?

Tom Caswell

Just that certificate holder. And document, document those. The, the stuff you do with, uh, in the, in the personnel files with your employees researching what they're doing, that that's what saved Dr. J would've saved Dr. Jonson. I mean, if, if she wanted to go to trial, um, we still have to settle it.

Yeah. Uh, and then general just kind of statements to kind of encompass all this, I guess. Give us a call if you ever have questions, you know, we're, we're here to help you. Even if it's not, you know, a quote unquote, uh, malpractice lawsuit. We can help you, um, through the risk management process. Um. The other thing that just popped in mind, do not change or alter records.

Um, that, that, that's not a good thing to do. We don't often see it, but, you know, if you have questions, gonna call us, we can talk you how to make an addendum. Stuff like that, that, you know, um, is gonna allow us to still hopefully defend the case if it's defensible by not making an issue outta records by changing them.

Jon Kec

Well, thank you guys for joining us. Thanks for, for pulling these three cases and giving us a, a really good variety. I think today, a lot of things to think about. Some, some really good. Steps to probably implement a lot of our practices to make sure that we are ahead of this game, should, God forbid, knock on wood, anything like this ever happen to us.

So thanks again, Tom. Zach, pleasure having you guys. Congrats on the upcoming baby, Zach, and, and have a fantastic Halloween.

Tom Caswell and Zach Myers

You too. You too. Thank you.

Jon Kec

Well, there it is. Three truly terrifying stories from our claims script. And in each one, the doctors really didn't do anything wrong. They followed the rules, they documented, they communicated, they built their practice with care, and they took care of their patients.

But we live in a litigious world, doing everything right doesn't always mean accusations won't come, or the lawsuits that may follow. So please remember, it doesn't always matter how careful you are. What matters is that you're prepared. And again, please tell us what you thought of this episode. Share your reviews, your ratings, and your comments wherever you listen to podcasts. Also, be sure to check out our YouTube versions of the podcast at the NCM IC YouTube channel and drop us a note or an email any time at Ask.ncmic@ncmic.com. We're always looking for reviews, comments, questions, or our next show idea. Thank you for braving this truly terrifying episode of Chiropractical.

I'm Jon Kec, and we'll talk to you again soon.