Doctor Who Ignores Warning Signs Faces Allegations

Todd Jones dropped out of high school in 1985 after his junior year. He later attended a local community college where he completed two years of a four-year carpenter’s apprenticeship program.

In July 2011, when he was 43 years old, Todd began working as a commercial construction superintendent and was sent by his employer to a neighboring state to work on the construction of a chain restaurant. On Friday, November 11, 2011, Todd experienced back pain while hanging doors at the job site. Later that day, he flew home to spend the weekend with his family. He did not seek medical attention during the weekend, even though his pain had worsened.

Todd’s back pain continued to worsen after he returned to the job site on November 14, 2011. He noticed that Ready Chiropractic, Inc. was in the same strip mall where he was working, and on November 15, 2011, he presented to the clinic to seek relief for his back pain.

Upon presentation to Ready Chiropractic, Todd reported to Bob Jaxson, D.C., that he had been taking Lortab and Soma found in his family medicine cabinet for sciatic and a “pinched nerve” problem. His chief complaints were muscle spasms and low back pain that radiated down his right leg and

Case Study Key Takeaways:

- Immediate action may be needed when a patient exhibits red flags.
- Instructions for aftercare can be as important as the exam findings.
- A properly executed informed consent form can improve the defense’s position.

See “What Can We Learn?” on pages 6 and 7 for more takeaways.
worsened with sitting, standing, bending, or lifting. He also reported “fire and numbness” in his testicular and anal regions. However, Todd was able to walk from the waiting room to an examination room unassisted.

On physical examination, Todd had an impaired and slow gait. Spinal range of motion at the lumbar spine was limited in all areas. Reflexes were uniformly decreased. The Bechterew’s test was positive on both the right and the left, with the right much more positive than the left.

Dr. Jaxson also performed a straight leg raise test, Braggard’s test, double leg raise test, Hibb’s test, and the Ely’s test. All of these clinical tests were positive. Minor’s sign was also present, and X-rays were taken of Todd’s lumbar spine. Dr. Jaxson limited his treatment on this day to 15–30 minutes of electric stimulation to Todd’s back while he was in the prone position.

**Patient Tries to Return to Work**

Todd attempted to work on November 16, 2011, but had to lie down to relieve his continued pain. In addition to back pain, he continued to have numbness in his buttocks, and his testicles felt as if they were on fire.

Todd returned to Ready Chiropractic later that day, November 16. Dr. Jaxson showed him the X-ray from the previous day and explained he had degenerative disc disease at L5 caused by years of bending.

Dr. Jaxson proposed a two-week treatment plan, which included chiropractic manipulations to resolve the current problem. Although there was no informed consent form in the record, Dr. Jaxson later said he discussed the course of care with Todd, and he agreed to it.

Todd then received a 15–30 minute session of electrical stimulation and went into another treatment room for his chiropractic manipulation. According to Todd, he was asked to lie on his left side and “Dr. Jaxson then turned and kinked up my leg and then reared up on my right hip and pressed down, which caused my back to crack.”

Dr. Jaxson then asked Todd if he felt any better, to which Todd responded that he was in so much pain that he couldn’t tell. He did report that the burning sensation in his testicles and buttocks was worse than the previous day. After the appointment, Todd returned to the job site for the duration of the work day.

Todd was busy with city inspections on the date of his next appointment, November 17, 2011, and therefore was unable to see Dr. Jaxson. That evening Todd called his wife to tell her about his symptoms and treatment with Dr. Jaxson. She encouraged him to go to the emergency room, but he had been drinking and didn’t want to drive himself to the hospital. Todd did try to call a co-worker for a ride but was unable to reach him.

Todd awoke at approximately 5:30 a.m. on November 18, 2011, finding he had been incontinent of feces in his bed. In retrospect, he believed he may have been incontinent of urine the evening before but thought his pants had been wet from the condensation from the beer can he was holding between his legs as he drove to his hotel from the job site.
Hospitalization Needed

Todd presented to the ER at the local hospital on November 18, 2011. He reported injuring his low back at work one week earlier, and for the past four days, he had no feeling below his waist. Although Todd had good movement in his lower extremities, he denied any sensation other than burning and numbness in his scrotum, back and legs.

Todd shared that he went to a chiropractor a few days after the back injury and that the D.C. told him he had a disc problem in his lumbar spine. After seeing the chiropractor, Todd reported that his pain had continued to increase. What’s more, in the 24 hours before going to the ER, he had been having bladder and bowel control problems, as well as episodes of sharp pain in his buttocks and numbness that extended from his low back into both extremities. This led the ER physician to suspect cauda equina syndrome.

The ER physician examined the patient’s rectum and found no sphincter tone and diagnosed Todd with an acute neuropathy. Consequently, the physician arranged to have him airlifted to a larger hospital in a neighboring city.

When Todd arrived at this hospital, the physical exam findings revealed 4/5 right lower extremity strength and 5/5 left lower extremity strength in all muscle groups. Sensation examination was grossly abnormal with loss of sensation from below L3 in a “saddled distribution.” He had no rectal sphincter tone, no cremasteric reflex and no genital sensation.

An MRI from earlier that day revealed that Todd had a large extruded disc at L5–S1, central and right to the midline. The diameter of the spinal canal was suspected to be narrowed at that level, due to a combination of short pedicles and facet arthropathy. The MRI also demonstrated some evidence of disc protrusion at L4–L5 that was thought to be degenerative in nature.

Patient Diagnosed

Todd was diagnosed with an acute spinal cord compression, secondary to a bulging herniated disc. Immediately after diagnosis, he was taken to surgery and underwent an L5 laminectomy and bilateral discectomy. The extruded, ruptured disc was surgically extracted, representing approximately 3 cc of material.

Todd tolerated the surgery well, with good recovery of strength noted the following day. However, he had persistent “saddle” numbness and bowel and bladder incontinence. He was given physical and occupational therapy for gait training and was instructed to use a Foley catheter bag. While in the hospital, Todd learned to ambulate using a front-wheel walker. After arranging for Todd to be followed by a physician in his hometown, Todd was discharged from the hospital on November 21, 2011. Because Todd still had incontinence, he was discharged with the Foley catheter.
By June 2012, a local physician determined that Todd’s medical improvement had plateaued, and he didn’t expect future improvement. At that time, Todd was able to ambulate, but he experienced back pain when walking on an incline. He also had pain and numbness in the lateral aspect of his left leg that extended to the bottom of his foot. This numbness affected his gait.

Todd also told his physician that he only had very slight sensation in his penis and none in his testicles. He said he was unable to achieve an erection, and it felt like his penis had been injected with Novocain. In addition, Todd was incontinent of stool, secondary to his total loss of sphincter control. He had pain throughout his groin area and difficulty sitting for prolonged periods of time. He continued to experience urinary incontinence.

**Lawsuit Ensues for Both Doctor and Practice**

On October 30, 2012, Todd Jones and his wife (the plaintiffs) filed a lawsuit naming Bob Jaxson, D.C., as well as Ready Chiropractic, Inc., as defendants. The complaint set forth two causes of action:

1) Malpractice and professional negligence
2) Loss of consortium on behalf of Mrs. Jones

Dr. Jaxson was an employee of Ready Chiropractic, Inc., which was wholly owned by Eldon Ready, D.C. The corporation of Ready Chiropractic, Inc. was uninsured for malpractice (see sidebar) at the time Todd was treated by Dr. Jaxson. As a result, the practice owner, Eldon Ready, D.C., was personally liable for providing his legal defense, as well as the damages found against the entity itself. The defense of Ready Chiropractic was paid for by Eldon Ready, D.C., and Ready Chiropractic, Inc.

Dr. Jaxson was insured by NCMIC, and he promptly reported the lawsuit to NCMIC when he was served with the suit papers. Within two days of tendering this matter to NCMIC, Dr. Jaxson had an appointment and met with the attorney NCMIC retained to represent him in this matter, Colin Ray, Esq.

At this meeting, the attorney asked Dr. Jaxson to discuss the care and treatment he provided to the plaintiff. Dr. Jaxson described how when he first greeted Todd Jones, the patient told him he needed to be “popped.” Dr. Jaxson said he asked for more information, and Todd relayed he had low back pain, right greater than left, and pain radiating into his right gluteal region.

Dr. Jaxson explained that he had specifically asked whether Todd had any numbness, tingling, or weakness below the belt-line and any bowel or bladder incontinence. In response, Todd had stated that he complained of

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*State boards generally set a required minimum of insurance coverage. Make sure to check your individual state’s board guidelines.*

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Practitioner Entity Incorporated? Your Clinic May Be Sued

Many doctors don’t realize that merely forming a separate entity by filing paperwork with the Secretary of State’s office to incorporate puts the practice itself at risk for being sued. Even as a sole practitioner, your clinic may be named in a malpractice action if it is set up as a separate entity.

Plaintiff attorneys have access to various resources, such as Secretary of State websites, which can be used to search for entities associated with you and your practice. It is likely that if an entity is found it will be named in any malpractice lawsuit that is filed. If your entity is not named on your policy, NCMIC would not be obligated to provide a defense for the entity. This could potentially cost you thousands of dollars.

The solution is that NCMIC offers a shared limits of liability entity coverage option at no additional premium. So, as the owner of a chiropractic entity, e.g., an LLC, partnership, corporation or other, you can share your limits of liability with your practice entity for no additional charge. (Separate limits are also available for an additional premium.)

To better protect you and your practice, please contact NCMIC today at 1-800-247-8043. We will review your policy, analyze your situation and explain your options. The application for professional entity coverage is also available by logging in to the “My NCMIC Login” section of www.ncmic.com and clicking on the “Manage Your Policy” tab.

*Policy features vary by state and are subject to underwriting approval.*
“fire and numbness” in his testicular and anal regions but denied having any weakness or incontinence. Further, the majority of his complaint was the radiating pain. Dr. Jaxson shared with his attorney that after this initial consult he performed a chiropractic examination.

**Sparse Recordkeeping a Concern**

Attorney Ray discovered Dr. Jaxson’s treatment records on the plaintiff were sparse at best. Dr. Jaxson’s SOAP note from November 15, 2011, simply read, “Exam, lower lumbar.” Dr. Jaxson hadn’t documented the aforementioned conversation, nor did he document the examinations performed or their findings. In explanation, Dr. Jaxson mentioned he always performs the same series of examinations on patients presenting with low back pain. He also recalled that most, if not all, of his exam findings performed on Todd were positive. Based upon his initial consultation and objective examination of Todd Jones, Dr. Jaxson said he believed a conservative course of chiropractic treatment consisting of physical therapy, electro modalities and general traction was warranted. However, he only administered electrical stimulation (not an adjustment) to Todd’s lumbar spine at the November 15, 2011, visit.

Dr. Jaxson explained to his attorney during this first meeting that Todd returned on November 16, 2011, with the same complaints as the previous day. Dr. Jaxson said his examination revealed tight and tender paraspinal muscles and that he performed an electro-modality treatment to relax the patient’s muscles and gentle traction mobilization. As Dr. Jaxson performed the traction, he asked the patient if it provided any pain relief. When Todd denied any relief, Dr. Jaxson discontinued the treatment.

Dr. Jaxson also told his defense attorney that following the treatment he advised Todd not to return to work that day and to refrain from bending at the waist for any reason. He also advised Todd to contact him immediately or proceed directly to the ER if his pain worsened or if he had numbness, tingling, or bowel or bladder incontinence.

Dr. Jaxson did not document any aftercare instructions; therefore, his recollection of these instructions was entirely from memory. Dr. Jaxson explained that it was his understanding that charting aftercare instructions was only optional.

Dr. Jaxson’s SOAP note from Todd’s November 16, 2011, appointment read as follows:

**Subjective:** Low back pain continues right greater than left.

**Objective:** Tight and tender lumbar paraspinals.

**Assessment:** Same.

**Plan:** Chiropractic manipulative therapy to lumbar, electrical stimulation.

Dr. Jaxson explained to attorney Ray that in Todd’s case, “chiropractic manipulative therapy” really meant traction but not a traditional adjustment. He was emphatic that he never did any chiropractic high-velocity, low-amplitude adjustments.

*continued on page 6*
Case Assessed by Defense Team and Experts

Attorney Ray’s impression of Dr. Jaxson was that he was professional, presented himself as an intelligent and thoughtful person, and responded to questions in a straightforward manner. This attorney believed Dr. Jaxson would make a credible witness on his own behalf.

Conversely, Dr. Jaxson’s defense team believed Todd Jones came across as having intelligence significantly below that of an average person but as someone who was also sincere and respectful. Attorney Ray described the plaintiff as unsophisticated but likeable, and he didn’t believe he was intelligent enough to make up the history he provided or the treatment he received from Dr. Jaxson.

A Doctor of Chiropractic expert was retained to review this matter for Dr. Jaxson’s defense. His opinions were based on the assumption that Todd Jones did not report cauda-equina-like symptoms to Dr. Jaxson. According to Dr. Jaxson, Todd complained of low back pain that radiated into his leg. He made no mention of numbness, weakness, or other neurological symptoms which would have warranted an immediate referral. This D.C. expert did not believe there was anything about Todd’s presentation that would have made it incumbent upon Dr. Jaxson to immediately refer him for neurological consult.

In addition, the D.C. expert noted that if cauda equina syndrome was in fact in progress, there was no apparent evidence that Dr. Jaxson’s treatment was a specific and proximate aggravating factor. Therefore, this expert consultant believed Dr. Jaxson’s treatment appeared appropriate. However, the D.C. expert did express concerns with attorney Ray about a couple aspects of Dr. Jaxson’s care:

- Although the D.C.’s X-rays were not of diagnostic quality, they were not retaken.
- Even though Dr. Jaxson said Todd agreed to chiropractic care, there was no informed consent form in his record.
- While the expert didn’t think the doctor was obligated to refer the patient, he did think it would have been advisable when the patient mentioned “fire and numbness” in his testicular and anal regions.

What Can We Learn?

By Jennifer Boyd Herlihy, Boston, Massachusetts, and Providence, Rhode Island

Red flags. Testicular and rectal numbness are red flags for cauda equina syndrome. In this case, Dr. Jaxson should have considered immediate action and possibly a referral. Also, when the patient alluded to a past adjustment, it should have alerted Dr. Jaxson that the patient had previous chiropractic care and prompted him to investigate. Finally, because the patient had access to and had taken Lortab and Soma, Dr. Jaxson should have questioned the chronicity of the problem and conducted an in-depth patient history and evaluation of that issue.

Aftercare. Instructions for care at home and between visits are as important as the actual exam findings. Also, in the courtroom, lack of documented evidence about instructions given is perceived as the equivalent of no instructions given.

Records. Another reason to have good recordkeeping is that after a lawsuit is filed, a doctor’s unwritten recollection of the events, symptoms, treatments and instructions may be seen as self-serving by a jury. In this case, detailed records, including a properly executed informed consent form, could have improved the defense’s position.

Credibility. The question of who to believe is critical in any jury decision. In this case, the jury might have believed the doctor had motive to testify that he did not adjust the patient. However, it would be difficult for a patient to describe a specific procedure unless it was performed, which may lend credibility to the patient’s description of the adjustment. In this case, the documentation supported the patient.
The neurosurgeon retained for Dr. Jaxson's defense was of the opinion that, assuming Dr. Jaxson only applied gentle traction, nothing Dr. Jaxson did caused or exacerbated the plaintiff's herniation or led to the development of his cauda equina syndrome.

**Mediation Mandated**

The court ordered this case to mandatory mediation. Prior to mediation, the NCMIC defense team discussed and assessed the pros and cons of the case. Attorney Ray thought an argument could be made that the cauda equina syndrome progressed on its own. If anything, the condition was aggravated primarily by the patient’s work, rather than anything the provider did. However, the defense team was concerned that the doctor’s poor quality X-rays and recordkeeping, as well as his failure to at least consider a referral, based on the patient complaints, would hurt the defense of this case.

Around this time, the plaintiff's attorney provided the NCMIC defense team with an estimate of damages, should the case be tried. This attorney contended that his expert consultant would opine lost past wages and benefits and lost future wages and benefits would be $1,233,978. Past medical expenses were $140,386 and growing. General damages were calculated to be $500,000, the maximum allowed by the state in which the suit was brought. Adding in a life care plan calculated by plaintiff’s expert, the total damages claimed at trial would be $3,494,261. In contrast, the total damage exposure calculated by the defense team, on the high end, was $1,365,000.

After hearing these numbers and conferring with counsel about the pros and cons of the case, as well as the personal exposure the doctor faced for any judgment above his $1 million policy limit at trial, Dr. Jaxson became very anxious and requested his attorney attempt to settle the case. Dr. Jaxson's defense team believed the chances of winning the case was marginal and agreed that it would be in the doctor’s best interest to settle. Consequently, Dr. Jaxson provided his written consent to settle.

Todd Jones’ attorney made an opening demand at the mediation in the amount of $2,769,000. After a great deal of back and forth, the claim resolved for approximately 10 percent of the initial settlement demand. NCMIC’s legal expenses and fees to defend Dr. Jaxson in this matter was $148,838.06.

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Jennifer Boyd Herlihy is a healthcare defense lawyer with the firm of Adler/Cohen/Harvey/Wakeman/Guekguezian, LLP, located in Boston, Mass., and Providence, R.I. She represents chiropractors and other healthcare providers in matters related to their professional licenses and malpractice actions. The firm’s website is www.adlercohen.com.**What Can We Learn?**

- **Non-diagnostic radiographs.** Because non-diagnostic X-rays cannot identify a patient’s condition, they often create credibility issues for the doctor. A skilled attorney will ask why the doctor used poor quality films to make important decisions. Also, if an X-ray is not useful but is billed to a third-party carrier, it may be considered fraud and create further credibility issues for the doctor.

- **Coverage issues.** Although NCMIC will support you to have your day in court, not every case is best tried in a courtroom. Deciding whether to settle or not settle is often a complex decision that should be made in consultation with counsel. Although your attorney is paid by NCMIC for their time, the attorney’s duty is to serve your best interests. In this case, Dr. Jaxson was likely best served by settling.

- **Entity coverage.** Ready Chiropractic, Inc. was not insured, so the burden of the cost of its defense was on its practice owner, Eldon Ready, D.C. The result of the lawsuit against Ready Chiropractic is unknown, but Dr. Ready could have suffered vast personal liability and economic exposure, as well as legal expenses to defend the clinic. (See sidebar on page 4.)

- **Patient noncompliance.** When a patient does not comply with a doctor’s instructions, the doctor should document the behavior and consider termination of care. If that would have happened when Dr. Jaxson instructed Todd to not go to work and the patient did not comply, this case may have ended differently.
Interacting with Multiple Generations in a D.C. Practice

By Carie Sherman

Today, doctors in their 90s practice alongside people born in the 1990s. The differences between generations are not only apparent, they can cause conflict both with staff and patients.

For example, there are different perceptions about social media and what shouldn't be posted. To older generations, it may seem like a no-brainer to keep their professional and personal life separate. However, some Millennials may disagree with this.

In addition, serious gaps in communication preferences emerge. Members of the Silent Generation tend to prefer traditional, hierarchical communication and meeting face-to-face. Boomers are relationship- and team-oriented and generally prefer to establish a rapport in their interactions. Many Gen Xers prefer informal communication channels and may care little about building a rapport. Millennials often want instant communication and view collaboration as essential.

While this diversity can be enriching for patients and providers alike, the potential for conflict between generations looms. Consequently, doctors should consider the following when handling everything from clinical practice ethics and standards to patient privacy.

The Silent Generation (born before 1945)

Raised during World War II and the Great Depression, the Silent Generation’s working behaviors were heavily impacted by the uncertainty of the time.

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<tr>
<th>Traits</th>
<th>Perceptions of</th>
<th>Know this</th>
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<tbody>
<tr>
<td>Hardworking&lt;br&gt;Reliable&lt;br&gt;Conservative&lt;br&gt;Respect hierarchy and authority&lt;br&gt;Possess a high level of “institutional” knowledge—meaning they hold in their heads an understanding of the past experiences of an organization</td>
<td>Autocratic and inaccessible as leaders&lt;br&gt;“By the book”&lt;br&gt;Prefer to have the final word</td>
<td>Capitalize on the institutional knowledge and wisdom this generation brings to the workforce. Many of the lessons they’ve learned over their lifetimes are relevant, and younger generations can benefit from their mentorship.</td>
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### Baby Boomers (born 1946-1964)

Baby Boomers were raised in a stable economy and are often described as the “me” generation. They have spent their lives “rewriting the rules.” Boomers have dominated the workforce for more than 30 years.

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<tr>
<th>Traits</th>
<th>Perceptions of</th>
<th>Know this</th>
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<tbody>
<tr>
<td>Optimistic</td>
<td>Overly ambitious</td>
<td>Organizations should already be planning how to handle the loss of a major section of the workforce. Keep them in the workforce longer by providing flexible projects they can own. Boomers should also be placed in mentorship roles, as they value relationships and have vast knowledge to pass on to younger generations.</td>
</tr>
<tr>
<td>Nostalgic</td>
<td>Judgmental</td>
<td></td>
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<tr>
<td>Self-sufficient</td>
<td>Workaholics</td>
<td></td>
</tr>
<tr>
<td>Work long hours</td>
<td>Rigid</td>
<td></td>
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<tr>
<td>Lead by consensus</td>
<td>People-pleasers</td>
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<tr>
<td>Accessible to their teams</td>
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</table>

### Generation X (born 1965-1983)

Generation X was heavily influenced by the changing structure of the family—in many families both parents worked. Gen X is made up of “latch-key” kids. They witnessed massive corporate layoffs and saw major advancements in technology.

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<tr>
<th>Traits</th>
<th>Perceptions of</th>
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<tr>
<td>Balanced</td>
<td>“Slackers”</td>
<td>Gen X is informal and doesn’t like rules; however, they value training and feedback. As the Boomers retire, this generation should be given the training to take on leadership roles. It’s important for Gen X to understand how they are perceived (not inclusive, cynical, patronizing). Many perceive Gen X as being neglectful of workplace relationships.</td>
</tr>
<tr>
<td>Casual</td>
<td>Move on if not valued</td>
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<tr>
<td>Creative</td>
<td>Skeptical</td>
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<tr>
<td>Efficient</td>
<td>Rule-breakers</td>
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<tr>
<td>Flexible</td>
<td>Not team players</td>
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<tr>
<td>“Work to live”</td>
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<tr>
<td>Hands-off managers</td>
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<tr>
<td>Comfortable with change</td>
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<tr>
<td>Motivated by money</td>
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### Millennials (born in 1984 or later)

Millennials were raised by parents who nurtured and structured their lives. They grew up in a time of instant communication, and they were raised to think in terms of multiculturalism.

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<th>Traits</th>
<th>Perceptions of</th>
<th>Know this</th>
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<tr>
<td>Polite</td>
<td>Entitled</td>
<td>In general, this generation has little to no experience with the working life. They have been taught that they can do anything and aren’t afraid to voice opinions in any circumstance. The unwritten rules other generations follow in the workplace aren’t “picked up” by this generation. Many lack skills for dealing with conflict and lack focus in the workplace.</td>
</tr>
<tr>
<td>Relaxed</td>
<td>Impatient</td>
<td></td>
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<tr>
<td>Respectful</td>
<td>Distaste for menial work</td>
<td></td>
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<tr>
<td>Want to make a difference</td>
<td>Over-confident</td>
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<tr>
<td>Enjoy collaboration</td>
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<td>Self-inventive</td>
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<tr>
<td>Individualistic</td>
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<tr>
<td>Pragmatic</td>
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Meet Heidi Bevis

Say “hi” to Heidi Bevis, a senior claims representative who has been with NCMIC since 1990. You may talk to Heidi when you call the NCMIC Claims Advice Hotline. She helps answer questions from our D.C.s whenever they have a question or concern in their practice. For example, Heidi says some common questions she hears are:

- How long should I maintain patient records?
- What steps should I take to discharge a noncompliant patient?
- What steps should I take if I receive a request for my records?
- How do I notify patients if I’m retiring or moving?

Heidi encourages you to call whenever you are in doubt about a patient situation or incident that causes you concern. The claims team is here to help, and Heidi wants you to know that a claim will not be automatically opened when you call us. With NCMIC’s approach, you don’t have to worry that a call to the Hotline will jeopardize your claims-free status. (The facts of your phone call are simply noted so we can continue providing you with top-notch service when you call us again.)

In the event you face a claim or board investigation and Heidi is assigned to your case, you can feel confident in knowing that she understands and appreciates chiropractic care. She prides herself in having your best interests at heart. Ronald Wilds, D.C., Blue Springs, Missouri, attests to this: “The worst feeling a chiropractor can experience is having a malpractice suit filed against them. I had a frivolous suit filed against me, and it was a very stressful two-year process. Heidi Bevis and NCMIC got me through it. Heidi was in continuous contact with me, as was my attorney, Greg Forney. Heidi explained the process and ‘held my hand’ throughout this rough time. Heidi sat in the courtroom as the verdict of 12-0 came down in our favor. I may not still be practicing—40 years now—had it not been for Heidi, Greg and NCMIC. Thanks, Heidi.”

Heidi has a 21-year-old son who is overseas serving in the Air Force and a 19-year-old daughter who is studying pre-med at the University of Iowa. Heidi enjoys spending time with her husband and family, as well as traveling.

As an NCMIC policyholder, you will be reassured to know that Heidi truly cares about helping Doctors of Chiropractic and has the extensive knowledge and experience to assist with their claims or to answer just about any chiropractic risk question they may have.
What’s missing
from your business insurance policy?

For example, does your insurance coverage include:

- Data Breach or Cyber Liability
- Employment Practices Liability Insurance
- Umbrella Insurance
- ERISA Coverage

Our agents work with D.C.s like you every day. And we have access to a nationwide network of insurance companies to provide you with options for both coverage and premium.

For a no-obligation insurance review, contact one of our agents today.

1-800-769-2000, ext. 8275  www.ncmic.com/insurance  agents@ncmic.com

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Attorney Offers Internet and Electronic Media Advice for D.C.s

By Joseph M. Fasi, II

As an attorney who has represented Doctors of Chiropractic in malpractice cases for many years, I have seen firsthand why it is essential for doctors to be aware of the impact that the Internet and technology have on their practices. Here are a few examples that illustrate why this is the case.

Rate My Doctor Sites
There are a number of websites that allow people to rate their doctors. If someone is disgruntled and they post a bad review of your services on one of these sites, that’s a problem. Millions of people who are searching for a Doctor of Chiropractic in your particular area or with your particular expertise may see it.

My suggestion is that you or someone in your office monitor what people are saying about you. This can be done simply by Googling your name. In some of these incidents, you can correct a false review or even erase it from your record. In other cases, you may be able to provide additional information to balance out a negative review. Web services also exist to monitor for any negative or disparaging comments/reviews and can act quickly to correct or remove these comments.

Text and Voice Messaging
I have defended doctors who have received text messages from their patients, but then didn’t copy or save the text messages. As a result, the text messages were not part of the record. In cases like this, a patient typically will say that he or she reached out to the doctor and the doctor gave xyz advice or never responded. If the doctor is not able to produce the text message responses after a lawsuit is filed, that could create issues for the doctor.

Although my preference would be for doctors not to use text messages to interact with their patients, if you decide to do this, I would suggest that
you take a screen shot of those text messages. Make sure to include them in your record for that patient so that it is documented. That way, the content of the conversations is saved and nobody can accuse you of something different.

When it comes to using the older technology of voicemail, I think it’s dangerous to allow people to leave messages without making it very clear that your voicemail is not monitored for purposes of clinical or treatment advice. In addition, I would suggest that your voicemail should include a statement that if a patient is having a problem, he or she should contact the office during business hours. If an emergency exists, they should be directed to hang up and seek emergency care.

Websites

I represented a chiropractor before a state regulatory board. He was a D.C. who advertised on his website his ability to perform certain procedures that were borderline medical. To avoid letting people know he was a chiropractor, he left out any reference to being a chiropractor or the fact that he was a D.C.

Because anything on the Internet is easily found, the state board learned quickly what the doctor was claiming. They came down pretty heavy on him for what they thought was false advertising and for offering procedures that were outside the scope of what the state allowed a D.C. to do. Of course, the board likely would have learned about the doctor’s activities anyway—the fact that they were online just accelerated the process.

Keep in Mind

The aforementioned concerns don’t even touch on social media, which is a whole bailiwick unto itself. Regardless, the most important thing to keep in mind is to keep your communication and your content on a professional level and to always comply with your state requirements.

If in doubt, contact NCMIC for assistance or talk to an attorney well-versed in handling social media issues and your practice.

Don’t miss these popular posts and much more:

- How Should I Dispose of Old X-rays?
- 4 Things Not to Do When Documenting
- What Is My Risk with Walk-in Patients?
- Problem Patient: The “Doctor Shopping” Patient
- When Is My Advertising Considered Misleading?
- Is a Doctor Liable if a Patient Injures Someone?
- What Is My Risk with an Alcoholic Patient?
- Problem Patient: The First-Time Patient
- Words of Wisdom about Cash Only Practices
- How to Create a Policy and Procedures Manual
- Is Digital Signage for You?

Visit our website at: www.ncmic.com/prc/blog/
NCMIC Foundation Announces McAndrews’ Award Recipient

The NCMIC Foundation has announced that William B. Weeks, M.D., Ph.D., MBA is the 2016 recipient of the Jerome F. McAndrews, D.C., Memorial Research Fund Award. The presentation of the award was made on March 18, 2016, at the Association of Chiropractic Colleges Educational Conference and Research Agenda Conference (ACC-RAC).

With more than 20 years of experience in health services and health policy research, Dr. Weeks was selected for bringing a much-needed expert viewpoint to research on policy and chiropractic care. His research has focused on measuring healthcare quality, costs, and value.

As chiropractic becomes more integrated into the mainstream healthcare system, decision makers will want to know if inclusion of chiropractic services will result in better outcomes and more value creation. Dr. Weeks recently published two papers in these topic areas.

Dr. Weeks is a Professor of Psychiatry and Community and Family Medicine at The Geisel School of Medicine at Dartmouth, where he works at The Dartmouth Institute for Health Policy and Clinical Practice as a senior research scientist.

The Jerome F. McAndrews, DC, Memorial Research Fund was created by the NCMIC Foundation to honor Dr. McAndrews’ longtime support of the scientific and practical advancement of the study of chiropractic. It provides an award each year to a worthy research recipient. For more information about the award, go to https://www.ncmic.com/alerts-news/news/ncmic-foundation-announces-recipient.aspx.

Board of Directors Results Announced

John DeMatte IV, D.C., Claire Johnson, D.C., MSEd., Ph.D., and Mary Selly-Navarro, R.D., D.C., were re-elected to the board of directors of National Chiropractic Mutual Holding Company during the annual meeting on April 18, 2016, in Clive, Iowa. For more information about the board, go to: www.ncmic.com/about-ncmic/ncmic-management.aspx
FOUR SITUATIONS
That Can Put Your Practice At Risk

You might be surprised to learn that situations like these can expose your practice to financial loss.

1. **Trips and Falls:** Let’s say a patient trips in your office, breaks his wrist, sues you and the doctor who owns the building. Your portion of the settlement cost and attorney fees totals $40,000.
   **SOLUTION:** A business insurance policy could cover the $40,000 payout. Don’t assume the other doctor’s insurance covers you. Without your own policy, your practice will have to foot the bill.

2. **Employee Accident:** If an employee is on work-related errand in his personal car and is in a car accident, your practice could end up paying for medical bills, rehabilitation and lost wages.
   **SOLUTION:** Workers’ compensation insurance would cover costs like these. Most states require businesses to have this insurance if they have employees.

3. **Computer Held Ransom:** Hackers know smaller businesses can be easy targets. Recent efforts involve holding a computer and its data for ransom. If the ransom isn’t paid in a timely manner, they threaten to destroy all of your information.
   **SOLUTION:** A data compromise insurance policy can help cover the expenses associated with a breach.

4. **Employee Sues You:** If an employee sues you, it can be expensive even if you’re found not liable. For example, if a former employee sues you for discrimination (including back wages for the time they are unemployed), your attorney fees could add up quickly even before it goes to court.
   **SOLUTION:** An employment practices liability (EPL) insurance policy will cover the defense and settlement costs up to policy limits.

Don’t put your practice at risk of financial ruin. Having the proper business insurance in place can make a difference when the unexpected happens.

Our agents talk to D.C.s every day about situations like these.

Contact us today about insurance you may need to protect your practice.
agents@ncmic.com
800-769-2000, ext. 8275

NCMIC Insurance Services is a licensed insurance agency. Insurance coverage is underwritten through some of the nation’s leading insurance carriers. CA license #0B84564. In NY: NCMIC Insurance Agency  In MI: NCMIC Insurance Services Agency, Inc.
Malpractice defense attorney Victoria Vance recently shared with NCMIC five things to keep in mind on this matter. She noted that at some point every Doctor of Chiropractic is apt to come across a patient or a patient’s family member who seems particularly challenging to their practice. Therefore, doctors should be prepared to:

1. **Identify the Patient**—It is important to be able to recognize that a patient may be dissatisfied or concerned about a particular issue or aspect of their care and be able to know that they may need additional attention.

2. **Manage the Patient**—The second step is to be prepared to actively manage that patient. That means being able to understand that the patient, because of their concerns, may need some additional time for an appointment. You may want to consider scheduling the patient earlier in the morning or at a particular time of the day when you know you can give that patient the time and attention the individual needs.

3. **Communicate with the Patient**—Another overriding consideration is to communicate. Patients may have concerns or challenges, and for you to manage your patients and provide them with the best chiropractic treatment, you need to try to understand what their concerns are. It may really have nothing to do with you or the care they are getting in your office. There may be a family issue; there may be a personal issue.

4. **Document the Situation**—The fourth consideration for difficult patients is documentation. Take the time to document your records about your interactions and about questions and statements that the patient has made to you. In addition, make sure to document the efforts you made to address their care and the services that you’ve rendered to them.

5. **End the Doctor/Patient Relationship**—And lastly, always keep in mind that there may come a point where you feel you are not able to provide the type of care that your patient needs of you. At this point, consider ending your relationship with your patient. Tell your patient that it may be in his or her best interest to seek care with another practitioner. Look to your board rules for any guidance that is provided in your state for how you best need to communicate the termination of that relationship.

From time to time, I have patients who are more challenging than others. What is the best way to deal with them, and when is it time to end the doctor/patient relationship?