Jon: [00:00:00] This is Chiropractical, the podcast that helps you be better at what you do with new ideas and new tools. I'm your host, John Keck. On this episode of Chiropractical, we're going to explore deep into our legal claims crypt to find the true stories that are strange, maybe even scary, and might have you taking another look at the things you're doing with your practice.

What happens when an act of kindness between friends ends up in a lawsuit? How can doing the right thing end up so wrong? We've all had patients where things just didn't feel right, but have you ever had a patient secretly record a treatment session? Now that's a scary situation. To take us through these stories, we have two of our best from the NCMIC Claims Department, Shanna Patrick and Jamie Eibes.

They've dug deep into their vault for some of the scariest stories they can find. Why scary, you ask? Well, it's Halloween, Shanna, Jamie, What does Halloween look like in your houses?

Shanna and Jamie: Um, my wife really likes witches. So I've got about 15 witches [00:01:00] draped all over the house, which is annoying to me. So

Jon: you're watching Hocus Pocus every year?

Shanna and Jamie: Pretty Much. And I have three little kids, so we're all about the costumes and the candy. So, we haven't picked our costumes yet, but. We're getting close. We're narrowing it down. We've

Jon: We've got a little one. It'll be her first real Halloween. She keeps saying she wants to be a superhero, but we don't know exactly what that means.

So,we're, we're afraid of what the reaction might be on Halloween night if we get it wrong. So, our first story, it's one of the scarier situations a chiropractor may find themself in. We all want to help out our friends, but maybe we shouldn't.

Shanna and Jamie: Yeah. The case I'm going to talk about is involving Dr.

Albright. He. He's in a small community, has lots of friends, family in the area, and he often finds himself being asked to perform some chiropractic adjustments informally to friends and family. The one particular case we're going to talk about, his wife's former college roommate Laura, who was very good friends with the family, she was over having dinner with them.

She [00:02:00] mentioned that she had been having headaches. wasn't feeling right, and she asked Dr. Albright to give her an adjustment. Since it was so informal, he wasn't going to keep records. He had never seen Laura as a patient before. He didn't take her history. He just got out his portable adjusting table and set it up in his living room.

So he adjusted Laura on her neck and immediately she said, Well, I feel a little dizzy and a little woozy. Maybe not right. Dr. Albright Really attributed it to maybe she had too much wine with dinner. So he drove her home, said, just rest a little bit. I bet you'll feel great in the morning. So unfortunately, Laura deteriorated overnight.

She was having some vision issues. She couldn't stand without falling over cause she was so dizzy. So an ambulance was called. She went to the hospital. She was diagnosed with a bilateral vertebral artery dissection. She had a pretty rough recovery. She had some permanent residuals after that. She had to walk with a cane.

Um, she could [00:03:00] no longer continue her job as a nurse. Um, so she had a lot of medical bills and she really was hoping that Dr. Albright was going to help her out with those. During her recovery, Dr. Albright had texted her, sent her flowers, food delivery, said, I'm so sorry for this. Trying to be a nice guy.

Just trying to. Make her feel better. He thought nothing of that at the time, but however, shortly thereafter, after she was back on the road to recovery, he was served with a lawsuit where Laura was suing him, looking for her medical expenses and her lost wages to be covered. He was shocked about this, obviously.

This was his wife's longtime friend. She would come over for dinner frequently. He, he never thought something like this would happen. Um, in the lawsuit, she actually used his text messages that he had sent her saying, I'm so sorry. The card he sent with the flowers, she tried to use that against him, saying that this is an admission of wrongdoing and liability.

Unfortunately, since he [00:04:00] had not kept records, he didn't take a history, it was very informal, it was very difficult for NCMIC to defend this case. Even though there was really compelling evidence that this was a congenital issue with her arteries, it was not something that was caused by Dr. Albright. For So even though we had those facts on our side, it was really hard to defend that with no records.

She had said she had medical bills and future medical bills and lost wages in excess of a million dollars. We ended up having to settle the case for 400, 000. And Dr. Albright and Laura and his wife, their relationship was never the same.

Jon: Big takeaway, I think, there is no matter how well you know someone, you don't know their medical history, right?

If you're ever going to put hands on a patient, we've got to make sure we're going through that history, that proper exam, and then I think where you probably are going to go after this is document all of that, right?

Shanna and Jamie: Exactly. And even though it's a friend and you think, what's the worst that can happen?

You don't know their history. You really should treat it more formal, even if it's [00:05:00] someone you've known for years. He didn't know that she potentially had this congenital issue with her arteries that made them more susceptible to tearing, and she didn't even know it. So would a history or screening would have revealed that?

We don't know. It's hard to say, but again, the fact that there was absolutely no history, no records just made it so we couldn't defend the case.

Jon: You mentioned as things progressed in the case, he did what I think most people would do with a friend, right? They reached out, said, I hope you're feeling better, I'm so sorry this happened, can I send you dinner?

Whatever it may be, that actually was worse for the case.

Shanna and Jamie: It did end up being used against him. It can be seen as an admission. We tried to argue that it's just him being kind, it's his friend. It didn't mean anything. He didn't truly appreciate that he could be admitting liability. For more UN videos visit www.

un. org But unfortunately, there is a fine line there between doing the right thing and showing appropriate concern and full blown admitting liability. You can say, I'm [00:06:00] sorry you're going through this, but maybe shouldn't say, I'm sorry that I caused this.

Jon: So one big takeaway, big piece of advice you'd give to our doctors for a situation like this, what do they need to know?

Shanna and Jamie: Yeah, I would say the most important thing is just make sure that you're treating them as a patient, keep records, follow all the standards of care. I hate to be a Debbie Downer about it, but friends and family can sue you.

Jon: Our second story is going to be a little bit different. Everybody's, I think, well aware of the risks of malpractice accusations.

We touched on this a little bit with the first story, but let's take a look at some of the other things that happen. We don't think about board accusations. Patients going to a board and saying that we did something wrong. Maybe it's a malpractice claim. Maybe like in this story, it's something a little bit different.

But. Jamie, can you take us through story number two?

Shanna and Jamie: Dr. Richardson had been a chiropractor for over 25 years, so very well known in the community, well respected. Overall, just a really good guy, [00:07:00] cared about the community. He had a new female patient, Christina, present to his office. Patient showed up with low back pain.

A patient decided to volunteer that she's had prior chiropractic services and it didn't go well. Felt that the doctors were too handsy. So right out of the chute, Dr. Richardson got a bad gut feeling about this patient. But knowing his background, how he cares about his patients, he decided to give it a run and see if he could help her out.

The doctor is, was basically a solo practitioner. He had a receptionist slash C. A. who is a younger lady that had small children. So she had a lot of family obligations and would have to leave. So, in a lot of late patients, the doctor was there alone. In this case, Christina, with her work obligations, needed to have late appointments.

She would come in around 5 or 6, and the [00:08:00] doctor was alone for, I think, about every appointment that this lady had, which was a total of 5 visits. The only thing that stuck out to the doctor that he thought was odd and felt a little bit uncomfortable about was, is the fact that she wanted to have his cell phone number because she wanted him to text links, photos for some home stretching exercises, which he did.

The unfortunate thing about that is some of these patients want to send vacation photos back to the doctors. And it puts a doctor in a bad spot. They, they want

to be friendly. respond to him in a professional way, but it's just not really geared towards the relationship of a doctor patient.

Jon: So Jamie, before you take us through the rest of the story, right now, we've got a patient that has made some comments that seem a little unusual, right?

They've had prior chiropractic experience. It doesn't seem to have gone well. But they're still [00:09:00] coming back for care, have made comments about people being too handsy, but it's a profession where contacting of patient's body and touch is a big part of care. We've also got a patient that typically is scheduled late when there's not somebody else present in the office and they're looking for a way to communicate with the doctor after hours.

There's a

Shanna and Jamie: lot of patients that because of their work schedule, um, Need the later appointments. But again, with this being a new patient, it'd be different if it was a patient he'd treated for 25 years, knows the, the family history, things of that sort, but you've got a new patient coming in. It, it does definitely raise a red flag.

Jon: In those situations where you do have to see somebody later in the day, obviously in a perfect world, that CA or office staff member, at least is in the building. If it isn't possible, life happens, right? She had to pick up her kids. The patient may have to come in late. It's something you can work with, but how do you set yourself up to be successful in a situation like that?

Shanna and Jamie: [00:10:00] lot of doctors have open door concepts. They don't want to be in a room with a patient that they don't know very well, especially if it's the opposite sex and it's a patient they just don't know quite well. So the open door concept is huge. So, so Jamie, where did this end up? So. Not only did the text messaging continue, the patient also requested him as a friend on Facebook, which he Really didn't want to accept, but did it to again, just be friendly.

And again, that continued with more photos. The doctor was going to do some E STEM on this last visit and obviously to apply the pads, you have to put it directly on the skin. So he lifted the patient's shirt to apply the pads with her permission. The patient then just made a comment, Hey, do I need to, I'm completely undressed for this procedure.

I made a few other inappropriate comments that really put the doctor in a awkward position [00:11:00] to try to lighten the situation. He made a few jokes, again, trying to cut through the ice with the comments that she provided or had mentioned. Uh, unbeknownst to the doctor, the patient, uh, had been recording the whole visit with her phone.

Following the visit, she called the office, canceled her remaining appointments. Three months later, the doctor, of course, gets a board complaint and they have the audio. The doctor had to have an informal conference with the board, admitted that he made these comments, but he tried to explain why he made the comments.

But again, the audio just made it look really bad for the doctor. So. He was disciplined by the board. He had to take a boundaries and ethics course, which is again, a mark on the doctor's license for as long as he practices. To top that off, the patient [00:12:00] then filed a civil lawsuit, claiming that the doctor had made inappropriate comments, rendered inappropriate touching, things of that sort, and, um, we of course defended the doctor.

We ultimately got the case dismissed, good result, but again, it, the toll that it takes on a doctor going through a civil complaint with these types of allegations really puts the doctor in a bad spot.

Jon: I have to say it's a first for me. The patient recorded the visit. I've never seen that happen. I've never talked to a colleague that's had that happen.

Is that common?

Shanna and Jamie: We do see it. Um, but I wouldn't say it's common.

Shanna and Jamie: And I would say there's probably a couple of reasons. I mean, obviously the most nefarious reason is they're trying to set you up with something, try to extort some money out of you, or they've got some sort of vendetta. The, the other reason is sometimes I think people when they're at medical appointments, they want to remember what the doctor said.

They want [00:13:00] to have that in a recording.

Shanna and Jamie: It's really up to the doctor. If the doctor's comfortable with it. I would say that's fine, but I would say the majority of doctors really aren't comfortable with him being recorded on there. But if the patient's made it known, that's really up to the doc if he or she wants to allow the recording.

Jon: And any risk if they say no, right? Yeah, obviously something to document. But if a patient says, I want to record for whatever reason it may be and the doctor declines, is there any potential risk there? that you guys could identify easily?

Shanna and Jamie: I don't believe so. It's obviously, it's probably going to end the doctor patient relationship if the patient's adamant about recording the treatment session.

So I don't foresee any repercussions against the doctor.

Shanna and Jamie: No, I mean, it's generally, it's a private business and you have this final say on if someone's recording on your premises.

Jon: Let's spin it around. Would a audio or video recording be something that a doctor could do that may or may not help them if something like this were to happen?

Shanna and Jamie: It would definitely help [00:14:00] them. The problem is some States don't allow it. They can have cameras in the waiting room by the front desk. There's a few States or several States that don't allow recording devices and treatment rooms.

Shanna and Jamie: Yeah, and I would also play devil's advocate to that too, that it might not always help them unless you can be 100 percent perfect all the time.

Someone can get a recording of the treatment in the context of a malpractice lawsuit and say, you didn't do this right, you didn't do that right.

Jon: So in this case, it sounds like the recording, again, taken by the patient, was hurtful because of the joke. Was that really the only issue with it? Or was there anything else that with this case specifically was problematic?

Shanna and Jamie: Yeah. In this case, obviously we've had other ones where the doctors have gotten themselves in a little bit more trouble, hands in places, but in this case, it was completely, uh, the audio that, that really got the doc, again, he was trying to make light of the [00:15:00] situation. He was uncomfortable. And that by.

Telling a few jokes that it would maybe help him get over the hump with the way he was trying to respond to the comments that the patient was giving him.

Shanna and Jamie: And unfortunately, the recording did not show that he didn't touch her inappropriately. She was trying to allege that in the lawsuit. It only told his joke.

It didn't really show that he didn't touch her inappropriately, that everything was professional. So, it was the double edged sword for him.

Jon: One. Big message, big takeaway our doctors should take from this case. To me, it seems like the biggest one to me is red flags, right? If we'd have listened to some of these red flags in the beginnings, probably would have acted differently.

Shanna and Jamie: I think doctors just need to trust their gut. If you don't feel comfortable with this patient, you have the right to Dismiss the patient properly, which we can help you with if you ever run into a situation along these lines. Documentation, like I mentioned earlier, documenting the file that you've [00:16:00] addressed the patient on the parts of the body that they're going to be touching and providing treatment to.

Shanna mentioned the communication. That's a big part of the documentation that the patient has acknowledged and is aware of that. Certain areas they're going to be treating, and like I mentioned before, it's, I know as busy doctors, it's hard to write a book with all the notes and everything that happens in a treatment room.

But once you go through a civil lawsuit. You're going to learn why it's important to document your file extremely well because usually it's going to come down to he said, she said or vice versa. And the records are key. It's a very important part of a case that's being defended by NCMEC.

Shanna and Jamie: I'll also add a takeaway on Jamie's case there is just always keeping that professional boundary minding the doctor patient relationship.

You're not necessarily their friend, even if they are your friend outside of the office. While they're there, they are your patient. [00:17:00] Friending people on social media can get problematic. Best to have like a business page where you can have followers that way. If you do like, if you are someone who likes to give out your cell phone number to your patients, consider having a separate cell phone for that purpose.

And making sure that if it ever crosses that boundary,

Jon: you're in doctor mode, do the things that go with doctor mode and don't let those two cross. Thank you both. That's been two great cases. I think give some unique perspectives on both malpractice, but like I said, some things we don't think about as much getting the board involved in some of these conversations and what exactly that can do.

So appreciate your time. Thank you.

Shanna and Jamie : Thank you.

Jon: Here on Chiropractical. We're always trying to find the new ideas and tools that will be useful for you and your practice. Thanks. If you have questions or suggestions, please reach out. We'd love to hear from you. You can always email us at ASKNCMIC@NCMIC.com.

com and be sure to follow or subscribe to Chiropractical. You can find all those details in our [00:18:00] show notes. I'm Jon Kec, and this has been Chiropractical. We'll talk to you soon.