



Whoops – I went on a date with my patient. Now what?

In this episode, we look at professional boundaries

Chick: Hi, everyone. This is Chick Herbert, and welcome to Chiropractical. I've heard it said that it takes 20 years to build a reputation and five minutes to ruin it. On today's episode, we talk about one of the most common ways chiropractors ruined their hard earned reputation. Violating patient boundaries and sexual misconduct.

Melissa: This is Melissa Knutson. Today we're joined by Heidi Bevis and Mike Whitmer. Heidi has been with NCMIC for 31 years as a senior claims consultant and she has seen it all when it comes to defending our chiropractors against lawsuits and board allegations. Mike Whitmer is Vice President of Chiropractic Insurance Programs for NCMIC and among his many duties, he speaks with groups across the country about this very topic.

We all know there are certain activities that are inappropriate when working with a patient and yet we continue to see these allegations of people crossing the line. Because of that, we asked Mike and Heidi to pull together a few files and share with us some lessons learned and how we can protect your reputations going forward.

Welcome Heidi and Mike. Thank you for joining us.

Mike: Thank you for having us.

Heidi: Thank you.

Melissa: All right. Well, let's get into it. Tell us about one of our claims store.

Heidi: This first scenario was a board grievance that was an ethics violation. Our insured was dating a patient, was in the midst of a divorce while dating this patient, and during couples therapy with his soon to be ex-wife confided to the therapist of his affair. The therapist felt that they were a mandatory reporter and made threats to our insured that they were going to need to report him for his acts of having this affair. Our insured decided to self-report himself to the board, which then turned into a board.

We retained an attorney, explained what had happened. It was a consensual relationship and the resolution of that board matter was our insured received a two year stayed suspension. He was able to work during that time, but he did have a stayed suspension. He had to complete CEC classes on ethics and boundaries, and he received a \$10,000 civil fine for having a consensual relationship with the patient. He was trying to do the right thing and confided in the therapist, reported himself to the board, and still received a pretty heavy fine.



Melissa: Where did this all go wrong?

Mike: This is something that chiropractic students have drilled into their brains throughout their curriculum, that it's inappropriate to date a patient, but it's something also that I think doctors sometimes forget. I've had many conversations with doctors through the years that they say, I knew it wasn't right, but we started confiding in each other or we started seeing each other after hours, and those small transgressions then lead to this much bigger issue that had serious impacts for this doctor. It is one of the issues that I have doctors take me to task on - Why? Why is this inappropriate?

This was a consenting relationship amongst adults. And I get it. But it was a consensual relationship amongst adults that had this other very important relationship as a component. And that's the doctor patient relationship. It's inappropriate to have this type of personal relationship with your patient while they're your patient, because there's an inherent imbalance of power within that doctor patient relationship that can be exploited on the part of the doctor for their benefit.

They have the fiduciary responsibility to make decisions in the best interest of their patient, not themselves, by engaging in this sort of activity they're putting their own needs ahead of those of their patients.

Chick: Even if the patient says it's consensual.

Mike: Even if it's consensual. And this is really something extraordinary, because this is something that is agreed upon across all healing arts, across all licensing boards that I'm aware of. This is something everybody agrees on. This type of relationship is inappropriate.

Heidi: We actually just had a call on this very issue 20 minutes ago. A doctor calls in "I want to date a patient. What should I do?" And we always say the same thing. When in doubt, refer out, refer them out – out of the practice completely. Do not treat them again. Don't let your colleague treat them. Completely out of the practice altogether before that relationship ever begins. Clearly the boards take these allegations very seriously. He had to pay \$10,000 along with taking classes and having his license suspended for two years.

And for what? To have a relationship with someone? If the connection is there and this is your soulmate, great. Refer them out, get them out of there. Don't treat them again. We hear it all the time. Relationship starts, it doesn't work out or the relationship ends, and now we have a board complaint. And then sometimes a civil lawsuit is filed as well, where they're claiming an injury occurred due to treatment, and when we really know deep down, it was because the relationship didn't work out.



Mike: A couple of things, just to add to that. You mentioned the impact to this doctor on their license. They had to pay a fine, but there's also reputational damage. Depending on the market you live in, this could be extremely newsworthy and then it gets out there that this chiropractor engaged in this activity. It's damaging to the individual doctor's reputation. It's also damaging to the credibility of the entire profession within that community because chiropractors tend to be painted with the same broad brush. The impact of behavior is significant.

Chick: Well beyond the financial impact. I mean, that's a big hit \$10,000 is a significant fine, but the damage to ongoing viability for your practice is extremely high. Malice doesn't really come into the equation here. It's often you start down a path and it's a gradual path and there's no malice intended, but then things go off the rails.

Mike: Sometimes, sure. Every situation is different and I'm sure Heidi will tell you that she seen it all.

Heidi: I have. And there is malice. There is ill intent. There are allegations made that aren't true against our insureds. Chiropractic is a very hands-on profession and it's good to explain what you're going to do before you're going to do it. But if I have a pulled muscle near my groin, yes, I'm there for treatment and that's fine. But if you're treating a woman or even a man for that matter, whoever you're treating, let them know, look, I'm going to be very close to a sensitive area. Are you okay with this? Would you like someone in the room? Cover every aspect you can to make sure number one, the patient is comfortable and that your intentions are very clear. Because when you're not, and you go ahead and you treat an area and in your mind, you're thinking, I'm going to treat this area, they've got an injury, I'm treating what I need to treat. The next thing you know, you've got a lawsuit on your hands. You've got a board complaint because they feel like you inappropriately touched them. We see it all the time.

Chick: So who sets the boundary?

Mike: Patient. The patient sets the boundary. What you can do with one patient, as far as your communication style and how you relate to patients in your practice may not be okay for the next patient. You really need to pick up on those cues and you really need to understand this patient's history possibly could have things in it that make this a very uncomfortable situation to them, but to you, it's just another patient encounter. Heidi's absolutely right. This comes back to one of our very basic and most powerful risk management tools and that's patient communication. Talk to your patients. Make sure they understand what's going to happen, why it's going to happen. Have that communication process with your patients. That is absolutely key. Something else that Heidi said is sometimes there is malice. Sometimes we do see these claims where the doctor treated the



patient entirely appropriately, and maybe the patient is looking for something. Maybe the patient is looking for a claim. Sometimes we can look at the patient's history and see that there's a pattern and practice there. This is not the first time that they've done this type of thing. Other times it is a new event, but sometimes that's happening. Sometimes it is a breakdown in communication that the patient didn't understand, like Heidi was saying, why they were being touched in that manner and they drew their own conclusions. Communication can help stem those misunderstandings.

Heidi: The other thing I would add is we know how hard all of you have worked to get your license. It's not an easy task. Don't throw it away by one bad decision, one bad comment, one maybe misappropriate treatment event where maybe you should have taken the time, take an extra five minutes, go over what you're going to do, make sure you have their approval and that they understand. It's just not worth potentially giving up your license for what you've worked so hard to get.

Mike: Absolutely. One thing that I want to go back to Melissa, you mentioned it. And Heidi, you mentioned it earlier. This is an equal opportunity thing. We've seen every combination of male, female, female, male, male, female, female, it's all over the board. So no matter who you are in practice, you need to be aware of your boundaries.

Melissa: Yeah, this isn't just about a woman scorned. This could be both sides of the table. So in this particular example, it happened to be a female. If I was going to sum up this first case, I would say married or not, male or female, mind your P's and Q's, don't date a patient. Make sure you're communicating as you're treating your patient, especially as you get to some of those sensitive areas. If you think you have a spark, a connection with a patient, refer that patient out and then proceed with a relationship, but not until that has happened because you're crossing those boundaries and you're potentially getting yourself into some big trouble.

Heidi: Exactly.

Melissa: Well, Heidi, let's get into our second case here. My understanding is this one has a few more twists and turns.

Heidi: It does. This one was quite interesting. This one is quite sensitive. I don't want anyone to become offended, but this is really what had happened. It was a board complaint that our insured was faced with. Kind of a little bit of backstory. New patient to the area comes in, isn't familiar with the area at all, had been involved in a motor vehicle accident, came in with some neck and shoulder pain. During the adjustment our insured made a comment, Do you like to see film because just right up the street there's a great cinematography area that shows pornography. And you might want to check that out.



And that was not all, unfortunately. This insured made another poor decision by commenting on this patient's clothing, made a comment on how her jeans fit, how she looked in them. So not only was she offended already by the comment made about the pornographic theater, but then he commented on how she looked in her jeans.

This offended the patient tremendously and this was clearly poor judgment made by our insured. Perhaps he should have just said, if you like movies, check out the Cinemark up the street. Maybe don't get into detail of what they show. She would find that on her own. But unfortunately he made an inappropriate comment to her, which she took offense to and then filed a board grievance based upon that. The board matter was quite uncomfortable for the insured, you know, needed to admit in front of a hearing before his board, as to what had happened, what he had said to the patient. Their conclusion was for him to take some CEC classes on ethics, along with receiving a fine of \$3,000. And he also had to create a written police for his clinic on appropriate workplace behavior. Those things I think were, were fair, honestly, because the concern here is this could have turned into a criminal complaint.

Instead, what happened is it turned into a civil complaint. So while this could have had a three-pronged effect, not only from the board, but also from a criminal standpoint and a civil standpoint.

Melissa: Well, Heidi, so there was a board complaint. that happened, but then it went further into the

Heidi: That's, right, yes. The same patient who filed this board complaint then filed a lawsuit over sexually suggestive and lewd comments and was claiming emotional distress.

Mike: And this isn't uncommon that you have the board complaint, the board sanctions the doctor. Now the doctor now has got a ticket to ride because they've kind of got it proof of concept from the licensing board. Then they go and find a plaintiff's attorney and Sue the doctor civilly to try to get damages. That's not uncommon.

Heidi: You have to walk the walk you do every day. If you are behind closed doors and you're with your significant other, that's one thing. But if you're, you're treating a patient who you don't know very well, number one, number two is new to the community and you make a comment like this, I'm not surprised that they were offended. I would be offended.

Mike: This case goes back to that point. We were talking about earlier that the patient sets the boundary, this comment was very offensive to this patient. I think that that comment would have been quite offensive to most patients, but different patients are going to process what they hear differently. Some things that you say to a patient you've been seen for 10, 15 years and you know very well and you've treated them and you know each other,



you have a baseline as far as what your conversations with them can look like. With a new patient in particular, you don't know. You don't know their history. You don't know how they're going to react to a joke, to a comment, to a description of an inappropriate film. You need to, with those patients be even more cautious.

Chick: that doesn't seem like an extremely high ethical bar that this person needed to stay above.

Mike: I do not disagree.

Chick: Chiropractors pride themselves on having a close relationship. They spend a lot of time with patients. From your experience in this space I think that can be a positive, but that can probably be a disadvantage as well.

Mike: You're exactly right, Chick. It is a double-edged sword doctors of chiropractic do a terrific. Doctors of chiropractic do a terrific job of communicating with their patients, building that rapport with the patient. Trust. Absolutely. They have the opportunity to do that because of their model of practice. They tend to spend more time with their patients than other types of healthcare practitioners. They see their patients more frequently and they build these relationships of trust.

That's a great thing for the patient treatment. That's a great thing for the doctor patient relationship. And it's also a great thing for risk management because people don't sue people they like, and that they trust.

It's a double edged sword that because what we can see is a blurring of the boundaries. Patient trusts this doctor, they have a good rapport. So the patient starts confiding in the doctor of issues they have in their personal lives. Perhaps the doctor starts confiding back and now we're into this area where danger lurks. The doctor at that point really needs to look at it, do some self-examination as to how they're relating to this patient and make sure that they're on solid ground.

Heidi: You just need to be aware what you're saying, what you're doing, where you're touching. In a perfect world I would love for there to be an assistant in the room every time you treat. We know that can't happen. There's a lot of solo practitioners out there and it's not possible. But if you're able to have someone in the room with you, especially if you're going to be working on a sensitive area, male or female, I would love to have a second person in the room because there's our witness.

Melissa: Perspective is also really important. We don't know what has happened in their life up until the moment they walked into that practice. You have to be careful because a kiss on the forehead to you may feel endearing, but to someone who has been a victim of assault in



the past, by a man of the same age, would take that as they're coming into my space. Perspective is really important and what may feel comfortable to one person is very uncomfortable to someone else.

Mike: We also need to be cognizant of our daily processes, our daily routines. When doctors are in practice their everyday things become routine. You need to be careful that you're being consistent with how you interact with your patients regardless of their gender, their age, their appearance.

An example that comes to mind is a young married couple came into a doctor's office because they were both involved in a motor vehicle accident. They both had very similar injuries and they saw the doctor several times. The doctor consistently gowned the wife and never gowned the husband. Sounds like a small thing. How is that perceived by those patients? Well, it became an issue.

Chick: It's a great point. We all go through the day and make a lot of non-conscious decision. Not that there's a silver lining in all of this, but a doctor who has gone through this process, do they run a better practice having experienced the trauma of a board action or a lawsuit? And how does that translate into their future practice success?

Heidi: They're faced with a lawsuit, they're faced with a board complaint. Everything is held in front of a microscope of what they should have done, what they could have done, how they could have been better. I often hear that it makes them a better doctor. One thing I've said for the last 30 years to these physicians is, imagine your records in front of a jury. What's on there that shouldn't be on there. What's not there you wish you would've said. Is there something you would say, something you would not say, with your spouse standing right in front of you? Treat your practice that way, give it the respect that it deserves for you're working so hard to get where you are. And be careful. And if you get into trouble, then that's when you call us as your carrier and you let us do what we can do to hire the best attorneys we can hire.

Chick: I think it's important that we realize how do you prevent that from happening? We want them to be better. We want them to be better without having to go through this process. So let's be proactive at being better. A really important topic. I'll take us back to where we started. It takes 20 years to build a reputation and five minutes to ruin it.

Heidi and Mike, thank you so much for your time today. It was very educational and informative, lots of good lessons for our listeners to take away and we'll have more information in the show notes and people can always visit the website at ncmic.com.

Mike: Thank you. It's been fun being here.



Heidi: Thank you!

Chick: Melissa, another great show.

Melissa: Absolutely. One thing I want our listeners to know. If you ever find yourself in one of these situations where you think perhaps you've crossed the line, or something doesn't feel right in your interaction with a patient, or if there's an injury and it doesn't have anything to do with a sexual impropriety, give us a call. It's important to call us at NCMIC. Call our claims department. We'll talk you through the next steps and how we can help you through the situation, and know that when you call us that in itself does not start a claim, and doesn't become a mark against your record or a blemish on your record here at NCMIC. We will just talk you through it.

So great episode. Thank you again and take care and be well.