



Jon Kec, Host

Not all horrors hide in dark basements or desolate woods. Some walk right through your clinical doors, and they even end up in a malpractice deposition. Welcome to our annual Halloween special, Claims from the Crypt. Pull the covers up over your head and prepare for four haunting tales from the front lines of chiropractic malpractice liability

Happy Halloween everyone, and welcome back to Chiropractical. I'm your host, Jon Kec, and on this episode, we're opening the NCMIC claims vault on the files that keep our risk managers up at night. gonna dive into four horrifying real-world scenarios. First, an AI bot giving terrifically bad advice in a critical emergency. Then, a ticking time bomb case where standard tests couldn't have saved the day. that, a predatory scam artist targeting an unsuspecting practitioner. And finally, a deadly habit we all may have: doctors who try to be the best friend of their patients and accidentally write something or say something that signs their own liability death waivers. Joining us back on the show is Tom Caswell and Zach Meyer from our NCMIC claims department.

Happy Halloween, Tom and Zach

Tom Caswell & Zach Myers

Happy Halloween, Jon Happy Halloween

Jon Kec, Host

Let's open up the crypt. Um, as, again, has become kind of tradition for us here at NCMIC this year, we're gonna, we're gonna dive into some things that, I guess, maybe keep y'all up at night, some of the horror stories, unfortunately, that you've have, you've had to deal with over the last year. Um, to begin, I think this is a great place to start, 'cause it's something we've talked about a few times this year: AI, technology. How do we integrate it into our practice? Maybe today, do we

not? So for this first one, it sounds like, uh, we have a doctor who was faced with a pretty split-second choice they had to make.

They decided to go to a bit of an unexpected source for some advice, and, uh, brought technology into the equation. could possibly go wrong there, right?

Tom Caswell & Zach Myers

Exactly. So Dr. Johnson is a name made up. We're just gonna use Dr. Johnson for a generic name. Dr. Johnson was going through... Yes, he was going through his morning routine, got his kids off to school, uh, was enjoying his coffee, and he was, he was, uh... While he was enjoying his coffee, he's doing what we all do and looking at their phone, and he was reminiscing on a funny, uh, picture his par- his kids sent of him.

They, he took them out fishing the weekend before, and they caught some good fish, but his, uh, out of a farm pond. But his kids did an AI photo of the fish he caught and made it into a great white shark on his AI picture, and he was chuckling about that. So it was kind of in his, in, in his thought of his mind.

And then as he put that away and started going through his morning routine, double-checking his patient load, his schedule for the day, realizing that, "Hey, this is a pretty light day," you know, um, this... He was looking forward to a good, good day. It was, uh, again, a light load, and he had time to do some things.

One of the things he decided to do since AI was in, in his mind, in his forefront, um, after he treated a couple patients and he had a break where there was a couple gaps where he didn't have patients scheduled, he went to his office and started saying, "I wonder what AI can do to help me in my, in my practice and make it better."

So after doing some of the things that we've all done or doctors have done, uh, you know, what, what can it help my, my practice, my billing, accounts receivable, you know, note, note-taking, all those things that people have, have investigated, um, you know, that he, he played around with that, then went back into treating patients.

Um, normal, normal patients. A patient that came in, a longtime patient that, um- Has been presenting with normal aches and pains, and he's been treating for years. Patient came in with his normal-- with a pretty normal headache and neck pain. Uh, doctor did his exam, treated, uh, did an upper cervical adjustment, and the patient started exhibiting neurological symptoms immediately.

Started getting nauseous, went to the bathroom in the, of the clinic and threw up, came out and started... The doctor, "Are you okay? What's going on?" And the guy could barely put a sentence together. He's marbling. W-words are mush, uh, kinda like that just happened, but words were mush, and he was garbled. And, uh, he, uh, said, "Well, you know, what do I need to do?"

And he grabbed his phone, and instead of calling nine one one for an ambulance, he call-- he reached out to AI, his AI app, and said, "You know, these are the symptoms. This is what's going on. What do I... What, what's the, what's the advice?" And the advice from AI was, "Call your malpractice carrier." So the doctor, us being his trusted malpractice carrier, he called us.

We answered the call right away, and the second he started telling us what was going on, I'm like, "Hang up and call nine one one right now. Call... Get the patient taken care of. Once he's there, they're in the hospital, call us back later, we can talk later. But get it, get the patient taken care of." So bad advice from AI.

You know, very, very bad advice. Um, so you, you can't trust what is going on with AI and w- what, what advice they're gonna give. The... Trust your clinical knowledge, trust your, what you've been taught. Uh, you know, don't trust AI in those regards. I mean, i-if you're using AI for anything in, in a, any note-taking, if AI's integrated in your note-taking, make sure you're doing your research.

Make sure your, your, you know that everything's being protected. 'Cause once you put stuff into there, patient information or, or charting or anything, it's pulling from all internet. It's, it's inputting that into the internet, so you have, you have HIPAA issues that you need to worry about on some of those things.

So you wanna make sure if you're utilizing AI, that personal health information is not being included in anything there. And then also just use y- use your clinical judgments to take away on that

Jon Kec, Host

Yeah. Yeah, that's a... I mean, I, I think it's probably a, an extremely stressful situation. Um, I can remember, I think it was actually before I officially graduated and was licensed, I was shadowing in a clinic and had a similar incident happen, right? Patient, I don't even remember if he was a... He had to have been adjusted, I guess, just given the, the circumstance. But, you know, got up off the table lightheaded, stumbled, didn't throw up, nothing like that. But, you know, had some stuff that clearly was going on. Um, and I, I obviously was just, I didn't know what to do. Luckily, it wasn't my responsibility, right? I was the, the 10th trimester student sitting in the corner watching all this happen. But the doctor that I was shadowing, you know, was on it. He knew exactly what to do, had the front desk call an ambulance, call this person's friend, who I think might have been in a, in the car in the parking lot just waiting to take him home from a normal appointment, right? Brought them in. Everybody had their conversation.

But, you know, in that type of a stressful situation, I can understand the panic. I don't know about the AI piece, right? Um, I don't know that that would be my first go-to even if that was what I had literally been on ChatGPT or whatever it was five minutes before the appointment. It's not, not my first call, and nothing the doctor did was wrong. Bad outcomes can happen from, from treatment, but when you have, when you have a, a skilled attorney on the other side taking your deposition and they're asking you, "When this all happened, what did you do?" "I grabbed my phone, I looked at ChatGPT, it told me to call my malpractice."

So your first... "My, my client is having this issue in your office and you called your malpractice? You, you ch- you checked ChatGPT, you didn't call 911 first?" And those are all, I mean, it, we can defend those 'cause there's still timeframes. We, we, I mean, the patient w- got to the hospital within a, a reasonable time where we, where anticoagulants could help if it w- if it was a stroke.

But, you know, it, it, it's one of those things where it makes it very difficult. It looks bad, and looking bad, y- the jury's gonna hear that. They're gonna see, you know, what did you do, those things, and it makes our job a whole lot harder on something that we could easily defend or, or defend versus now, now we're kind of behind the eight ball.

Jon Kec, Host

And I think the other piece there, right, is, you know, I think you, you brought it up, it's been brought up numerous times in other conversations around AI is you're still the doctor. You're the one signing these notes. And this, this is less to this specific situation and more AI integration in general. Um, you know, you're the one signing these notes. It's, it's not, it's not Dr. Gemini signing your notes. It's, it's you. You're the one with the license. You're the one with the training and the medical decision-making, and you're the one who's unfortunately gonna be held to the standard should something happen AI doesn't necessarily have as well.

Is there a question that a doctor should ask of a, a vendor, an EHR or something like that if they bring up AI as a part of their product? How do you as a doctor make sure you're getting the information you need related to that AI.

Tom Caswell & Zach Myers

Yeah, th- these are questions to ask the company that you're... So if, if a doctor's looking to implement AI in there, and they're looking for a software that, a record-keeping software that implements that to make their jobs easier, they definitely should be asking their company questions like, "How are you protecting this?"

And making sure you're documenting those calls, that information you're receiving back so you have a paper trail sometime down the road if something does come up. You know, this, then it, it... You're, you're covering your, you're limiting your risk in that you've taken steps to, you know, make sure that you are doing that.

So it's asking the company, "What, what's, what are we doing here? How are you protecting this? How is this protected?" And then, again, documenting those calls to make sure, um, that you have, again, if something falls back, that where something does happen or if there's breach, 'cause there's data breaches.

There's thing- those things happen, uh, with every company. So just making sure that you're taking steps and to ensuring that it's just not some fly-by-night company that just shows up and promises stuff they can't deliver. And to fishtail off that briefly, again, I'd always recommend, you know, if you're looking at, when you're dealing with any contract, right, um, there may need, y- there could be where I would suggest, you know, you have an attorney review any contract that you're a part of to make sure, you know, from a HIPAA perspective, that they feel confident, you know, uh, that that contract holds up.

Uh, again, there's always so much to, there's a lot to always evaluate. Um, additionally, you know, is there policies that cover that other insurer or the other, uh, um, person you're in a contract with if there is data breaches, HIPAA breaches. Um, so again, i- if and when you're approaching that topic, I would handle those on a case-by-case basis and, uh, always err on the side of caution and a- at some point you may des- may need to speak to an attorney to give a, a formal opinion on i- am I protected here.

Yeah. And also, you may, I mean, the state associations are good resources for running the practice 'cause we're, we're more for the, the, the chiropractic side of the, of the profession, and the business side, state, the state associations- Right ... are making sure the doctors, uh, they have their backs and doing things for the profession.

So that's what they're for. That might be a good resource as well. Yep.

Jon Kec, Host

Well let's, let's look at our second case today. What happens when you have a and yes, I'm using air quotes, typical patient come in, but they aren't actually typical? So how do you stop a ticking time bomb don't even know it's there?

Tom Caswell & Zach Myers

So the story I'm gonna kinda cover here is exactly that. We had a patient who presented to a doctor, um, and, and eventually the diagnosis was a severe spinal cord injury that led to the patient become paraplegic with a loss of bowel and bladder function. A-and they also had the inability to use their hands.

Um, unfortunately, as you'll see here, there's not a lot differently our insured should have done related to the treatment. Um, a-again, we were able to handle it, but the details of the case were we had a sixty-year-old woman present at the time of treatment. Um, she had some comorbidities. She was notably, noticeably obese, suffering from diab-- uh, was diabetic, um, and had diabetic neuropathy.

There's no new or recent acute injuries that would've, you know, warranted further workup or cause for concern prior to adjusting. Um, there's no contraindications to chiropractic treatment. Our insured interpreted the imaging studies that we took on, uh, March tenth, so this was five days before we provided the initial adjustment.

Those initial imagings, uh, came back, and there's no, uh, contra- issues related to the imaging scene as far as contraindications to adjustment. Um, eventually we did adjust the patient at the T3 region, so the thoracic, uh, three region. Um, our insured adjusted that patient, a-and after the adjustment, the patient returned, tried to return to the up right position, and as they did, the patient complained that they lost sensation in their body a-and they actually began to fall backwards.

Our insured luckily was on top of it, helped them, um, make sure they didn't fall where it hurt them, um, but at that point they realized this was a pretty severe issue. Um, patient was re-reporting a kinda loss of, uh, feeling, numbness, all those types of concerning symptoms. Um, actually at this visit, ironically, we had a, a paramedic was also present when this was all going on, so they actually assessed the patient as well.

So this just goes to show you too, we had everything really working for us. We had the doctor, we had a paramedic, we had immediate care, an ambulance was called. Um, the patient at the first hospital, they really weren't sure what was happening. They transferred to another hospital, um, and they were eventually diagnosed with a cervical stenosis with central cord syndrome, um, a-and they were diagnosed with q-quadriplegia.

Um, they eventually had surgery, uh, and unfortunately a year later this patient died, um, a-and some of those symptoms, um, related to the spinal cord injury were related to the death as far as, you know, trouble, um, you know, activities of daily living were definitely impacted. So our case went from, uh, an injury case then to a wrongful death case, you know, during that time period.

So again, wrongful death cases are obviously just by its nature larger, larg-larger in exposure. Um, we did unfortunately, and this is a scary part, we talked to, um, standard of care experts. There's nothing we should have done differently based upon how the patient presented. We, we had radiologist, radiologist, neuroradiologist, and orthopedic surgeons review the case.

A-a-and the, the basic conclusion is the patient was a ticking time bomb, but there's, there was really nothing that we Could have done or should have done differently based upon the, the initial assessment we took of the patient. Um, so through the course of handling the case and talking to our insureds, we had two insureds here, um, the decision was made to try to resolve the issue because of the exposure issues with this being a severe case, of course.

Um, we were able to negotiate a settle-settlement within the policy limits. Our insureds were very grateful to get it completed while being a little bit frustrated, of course, that they did not feel they did anything improper. But it was a, a... It's always a balancing act, right? 'Cause we have a-- Our ultimate audience is a jury, right?

So we gotta keep that in mind, and the insureds agreed obviously with that view. Um, but they were also very thankful with the process as far as how it played out 'cause we were able to at least give them reassurances, you know, from the expert reviews, that it wasn't-- it, it did not appear that their treatment was the, the cause, right?

It was just kinda wrong place, wrong time. They had a person with a basically ticking time bomb, um, and those symptoms presented at our office. Um, so again, it was really was a freak accident. The X-rays were clean. Our insured applied normal pressure while doing the adjustment. Um, a-- and again, our experts kind of concluded that even if we, um, adjusted in that area, uh, with abnormally strong pressure, that outcome would not be expected.

Um, so again, just a, a scary story where you can do everything correctly, and then you can still be blamed for something. Um, again, it wa- it wa- it was resolved in the long run. Um, but the reality is, you know, i-i- sometimes things aren't your fault, but there, there-- a claim could still come of it

Jon Kec, Host

With a situation like this one specifically, there anything that you can remember from the record that these doctors could have done differently, maybe should have done differently, didn't do that they should have done, anything at all that was missed? Or was this really truly, like you said, just unfortunately the worst kind of luck, wrong place, wrong time?

Tom Caswell & Zach Myers

Yeah, and it, yeah, from my recollection, there, there was not anything they should have done differently. Of course, in hindsight, you start second-guessing yourself. Um, but again, that's where I appreciate the process we go through as far as when we talk to our experts, of course, we don't... We ask them to give us the truth.

We don't, we don't need to, we don't want them to give us the answer we would like to hear because it doesn't do us any good, of course. I mean, 'cause at the end of the day, our ultimate audience is a potential jury, right? So, um, my recollection is there, there was nothing that the doctor should have done differently.

Again, we took imaging, the X-ray imaging prior to adjusting. Uh, there was no new information that would've warranted further or more advanced imaging, um, in this situation. Um, and again, we, we did have an expert, a standard of care expert, um, a-and this, uh, they, they, they did comment. There, there was nothing they, th-they by training should have done differently.

Um, so it was truly a, it, it was a, it was a frustrating process because again, you had the, you know, our doctors get in this profession to help people, and when they're being accused of, uh, potentially injuring somebody, they take this, you know, uh, personally. A-and they feel, um, of course, they feel bad, you know, about the situation.

They start second-guessing themselves. Um, so it was nice at least to give them some reassurance that we've had this reviewed and that it doesn't appear there's anything different they should have done. Um, unfortunately, we do have times where people just have these preexisting issues or u-unknown underlying issues that we can't see, um, until all of a sudden they're there, so

Jon Kec, Host

A, a question on maybe that last piece, right? Often times when I've talked to doctors that have had claims come up, they very frequently feel like they didn't do anything wrong. And what kind of, you know, and maybe reassurance do y'all provide to doctors in that situation similar to this, right?

We, we have the expert support. We have the, th- they've done everything right, still gonna be a claim. There's still gonna be a payout. There's still gonna be that mark on their record in whatever capacity that means, right? How do you guys balance maybe the personal side of that? Because to your point, right, they were trying to do the right thing.

They did the right thing. They're just trying to help this patient, and now this is in, I, I wanna say on their record. I think it's more than that, right? This is now part of their, their professional life. what sen- so what would you say the best counseling you can give to a doctor who's experienced that would be, or, or ones that have experienced it at the time?

Tom Caswell & Zach Myers

Yeah, I'll come up first and if you have some, Tom. Sure. But, uh, I like to kind of just talk through it initially. So when they call you, you know, y- as a doctor, you're an expert in what you do, right? 'Cause you know the standard of care. You, you do this daily. And a lot of these people have done it for 20, 25 years.

Um, you know, as a human, it's natural to kind of start second-guessing yourself when they, you know, we have a potential claim in front of you.

so a lot of times I'll just talk to the insured about what they did and listen, and then also kind of provide a soundboard, so to speak, as far as, "Okay, well based upon what you told me, of course we know what we know now, you know, but what should have you have done differently based upon your training?"

And a lot of times they've kind of answered that question themselves, is, "I shouldn't have done anything differently." So you almost let them answer and reassure themselves. And again, we're not here to sugarcoat things. If we, if we think there's an issue, we're gonna talk to you about it.

But the reality is most of our claims and our doctors, um, in, in those claims are doing proper treatment.

But, you know, does- doesn't mean somebody still can't make an allegation against you. So y- you sometimes gotta trust the process. And again, that's where I get expert reviews, which also help them also potentially reassure themselves, assuming there is no issue. Now, if there's an issue, we'll talk about it.

Um, but again, I, I like to just talk to them, and by the end of those conversations, they usually feel better and say, "Well, you're right, I don't think I should've done anything differently." But there's still gonna be anxiety there about a potential claim, so. Yeah. Yeah. You're, you said it right, like how we counsel them.

Like, sometimes I feel like we are counselors. Like, 25 years, I, I'm here... This will be my 25th year at NCMIC and talking to doctors on their worst day of their, of their profession- Mm-hmm ... their professional lives. You know, like, you know, the sky is falling for every one of them. And it, and it is. So it's, it's again, just talking through them, "Okay, what'd you do?"

What, what did the patient present with? You know, how, how, how did, how did you approach it? And then from a Monday morning quarterback standpoint, Doctor, is there anything you wish you would've done differently?" If they answer that no, which is the majority of the calls- Mm-hmm ... then, then it's just, okay, then this is just a bad outcome, you know, unforeseen thing that occurred, whatever it might be.

Um, and you just reassure them and give them confidence, uh, because... And then you give them knowledge. Knowledge is confidence as well. They have a great carrier, you know, with, with people that know what they're doing. And, um, just giving them information about what the process will be, what it will mean for them, what they're looking at, and then assuring them, "You have good insurance.

You're gonna be okay. Even if this all falls apart, worst case scenarios, a jury says no, they, they buy what they're selling, you know, here's what w- here's what will happen," all that. So you just arm them with knowledge. And once a doctor is comfortable with the process, what may happen, and, and again, us reassuring them, "Listen, I..."

Most, most of our claims are just bad outcomes. A- and, um, when you, when you go through them and, and tell them those things, they... It just helps them. It, it really does. And then, again, I, I tell, always tell the doctors too, if they do... Like, like Zach said, if, if there's an issue, we, we let them know what the issue is, but that's not the majority of our calls.

Um, a- and so, you know, when, when they have that, they... It just makes them feel better. I tell them, "Listen, there's calls I get that I hang up, I'm like, 'Oh man, we... I need to red flag that. This is gonna be a problem.'" And I, and I just tell the doctors, "If it's not that issue, if I, I don't have that, doctor, there's calls that, that I w- worry about.

This is not one of them. You know, take a deep breath. Everything will be fine. Go out and help the people like you know you do. You're in good hands if something happens."

My, my wife's a therapist, so she wouldn't like your, your comment about, uh, us being counselors. Oh, I've tried to use that and doesn't, doesn't, I get pushed back on that.

No, no. Yeah, yeah. I'm- I feel like it. But yeah, that- It's me. No, I, I know what you mean. I feel it. Trust me, I'm not trained. I, I hear you. But you do have to allow the rapport building. And again, you just listen. And again, we, we are, we're involved in litigation or claims daily so that our viewpoint, again, like Tom said, gives them confidence, right?

That you're, you're probably okay here. But if something comes up, we'll address it and take it step by step

Jon Kec, Host

I don't think we've ever talked about this, so I'm kind of interested to see where this one goes. Um, so we always want to assume patients are coming in for help, right? That everybody's just trying to get better. But that's not necessarily always the case. Sometimes you may not really know why a patient's there. So in this one, we had a bit of a, uh, a scamming or a scammer type incident. Talk me through it

Tom Caswell & Zach Myers

This is a, you know, uh, uh, based on a real claim I handled here. So, um, w- we have, uh, EMS burn cases come up semi-frequently. Um, but it was a burn case here that, uh, I got a, an attorney who sent me a demand with the pictures of a burn, okay?

Jon Kec, Host

Ok.

Tom Caswell & Zach Myers

initially, a- a- and the good news for us here with these burn cases is sometimes they're, you know, a office staff employee, um, who's, who's doing the treatment, so you don't really know who...

You know, they, the doctor can't comment on what happened sometimes. You know what I mean? In this situation, our doctor did the treatment, was with the patient the whole time, he commented that he had no heat source in the office, you know, as far as, uh, there was no heat source applied to the, the patient.

All, he used an ultrasound wand a-and an EMS treatment, um, for treatment of, uh, sciatica on this, uh, patient. Um, he did comment though, that he sent the patient home with specific instructions about icing the area once he got home a-and not to do that, uh, uh, or to not ice for longer than five minutes. Um, the insured commented to me on our initial phone call when he saw a picture of the burn, it looked like an ice burn, and I've had claims where the burn was an ice burn.

You know, not... Uh, by looking at the imaging experts, you know, can sometimes tell the source or the type of burn. Um, so again, the, the plaintiff attorney eventually sent us records to review. We send this out to an expert for standard of care opinion. Um, our s- our expert said, uh, "I don't see how this is possible.

Um, our-- your insured did not treat with a heat source." The ultra, um, sound treatment, the wand they're using, I guess, uh, the only way a burn could have occurred is if you hold that spot, you know, in a specific area for, you know, minutes at a time. Our insured obviously, uh, I shouldn't say obviously, but confirmed that they did not do that.

They had continuous movement, um, and there was no other heat source. So we end up denying the claim, um, sent the plaintiff attorney a denial letter, and I get a call out of nowhere on a, a Thursday afternoon, um, from a, uh, an attorney. Um, I answered the phone, and he was, he was pretty upset with me. Um, you know, saying, "Why'd you deny our claim?"

This is clear liability." Uh, and I shared with him the details, um, from my, my insured and then our expert review that we didn't have a heat source that was capable of causing the injury that they're alleging. Um, the attorney shared with me, he goes, "Well, my client told me your client put a, a heat pad on him."

And I said, "Well, uh, uh, I, I talked to our insured. He doesn't even have heat pads in his office. So the story's not lining up here." Um, to the plaintiff attorney's credit, he actually seemed kind of upset with his client, not us. The, the tables turned all of a sudden. On the phone call, he said, "Well, I'll call them and, uh, I'll get to the bottom of this 'cause I'm not gonna waste my time either."

Um, long story short is I never heard back from him after that call. So he reached out to his client, and I think he, he basically was direct with him and said, "I think you just told me a story." And, uh, that, that's what occurred here is the, the patient appeared to have Uh, exaggerated or made up details of the treatment to try to get an attorney to take on the case.

Um, we do also do background checks as part of the claim process to open a claim. A-and this person, um, had a lengthy history of lawsuits as far as them being sued and suing people. Uh, they had childcare, they had childcare, uh, liens, so they're behind on child support, and they also had history of tax issues.

So again, not that we're necessarily judging the patient, but they seem to have some lawsuit, uh, savvy and potential money issues that may have encouraged them or prompted them to try to fabricate a potential claim. I actually got a call from this individual's son out of nowhere 'cause they had the same name.

One was a senior, one was a junior, the junior was having issues with, uh, a lien placed on him because of this claim, um, or past claims because of the confusion about junior, senior. Um, s- and I think he even commented that, uh, uh, you know, he's like, uh... I told him i-it appeared to involve his, his dad, and he kinda-- We're talking on the phone, but you could tell by his voice, he, he's like, "Oh, he's..."

Okay, I know what's going on now. There, there's something, you know, um... I-it was not a surprise to him that maybe there was another lawsuit, um, o-of sorts. But again, this one worked out well for us, but it is scary that sometimes, not often, you know, there can be just total made-up facts. Um, and in this case, our insured had good records to support what they did.

They also, uh, you know, were, were clear with the insur- or the, the patient about follow-up instructions, and then our expert kinda confirmed everything. So it kinda worked as it should have. A-and to the plaintiff attorney's credit, he did, um, you know, uh, they did understand they probably were told a story

Jon Kec, Host

You kinda beat me to it, but, um, you mentioned during the, the initial kinda comments that the insured told us things and, and mentioned what he did and said to the patient. But here at the end, you said records. So clearly all of this was documented. All of this is either a standard form or something he puts into his notes every time when he does ultrasound, discharge instructions, all of that.

So we had all of that to point back to as well. It wasn't just doctor's word versus patient's word, correct?

Tom Caswell & Zach Myers

Correct. Yep, yep. We had all the records that support everything he spoke with me at that initial contact. Um, obviously, you know, records are, are, are critical, you know, as far as, especially when you're dealing with, like, post-op instructions. What, what did you send him? I think this guy did- did send home specific wr- in writing instructions about icing, you know, at home, um, I believe.

So we had all that documented. It was all in the chart. Again, we had it clear there was no heat source, you know, used i- in the, in the SOAP notes. Um, we had informed consent. Um, we had everything documented. Um, like again, the classic phrase is, "Records don't cause an injury," but they're super helpful, you know, regarding defending a claim.

'Cause i- if you don't have it, you, there's ways to kind of tell what you did, but again, our ultimate audience here is a jury, a- and things can appear self-serving if it's not documented at that, at that time. And not just the r- the note-taking documentation and your chart notes, but also the billing record.

Mm-hmm. 'Cause if you don't bill that you did heat, you know, when they're saying you did heat- Right ... most people don't do treatments and don't put it on the billing, you know? Right. So we,

So it's not just the records, you correlate it also with the billing and what you did on your billing.

Um, but yeah, I mean, and just what the, the, the scenario that, that Zach, the claim that Zach handled, it's not, it's not new. I mean, that, we, we talked about which one do we wanna- Mm- hmm ... pull from on this one, this, the scary patient that's looking in. So just trust your instincts, those red flags, those tingling red flags that you get when you're talking to a patient, things maybe just don't add up, pay attention, m- make really good notes on those.

Um, that said, and you know, it's... I mean, we've both been doing this for a long time, and there's patterns for when a scammer person might show up, and it's- Mm ... anti-cyclical to the, to the economy. When the economy's good, less scammers. When people are, are, when money's getting tight and people are getting more desperate, that's when we get busier.

So it's, it's kinda one of those things where we have to pay attention as well.

Jon Kec, Host

I think this ties into our last story fairly well. Um, so as providers, we do wanna help people. It's why we got into this, right? And I think part of that is developing a really strong relationship with our patients, having those conversations. But that maybe go too far?

Can we be too honest, too upfront, try to be too friendly? And, and what risks could that potentially generate that we don't anticipate?

Tom Caswell & Zach Myers

Dr. Gray, uh, is a newer practitioner, you know, bubbly personality, uh, gonna help everybody, gonna make everybody feel better. She loves her profession, loves helping everybody, and it's, it's why she became a doctor. Um, her patients love her healing hands. She has great reviews.

Everybody in the community seems to love her. She's got a, a new practice that's growing exponentially, and it's all because of her personality and how, how great she is at doing her job being a doctor. Um, she started a day like any normal day, um, and there was a new patient that presented, an older female patient who, uh, was new to her but had longtime chiropractic experiences.

But her friend, uh, Carol, a patient of Dr. Gray's already, said, "You should go see Dr. Gray. She has magical hands." So she decided, "All right, I'm gonna go make an appointment with Dr. Gray." And, uh, Dr. Gray, in the... sent her the initial intake paperwork on her website. Uh, she filled it all out. Our doctor reviewed it beforehand, before the appointment, saw there was prior chiropractic records, requested those records, got those records, reviewed them, pa- before the first, uh, be- the first initial exam.

Our doctor did an initial exam with the benefits of knowing her past history of chiropractic care. Uh, came in. She didn't have any specific complaints. She was just coming in mainly for maintenance care, uh, palliative care, and, uh, just general aches and pains from enjoying a long life, uh, you know, uh, i- in her later li- later years.

Uh, no red flags. The exam was good. Everything, history was fine. No contraindications. She's had tr- many treatments before, so our doctor, you know, started her treatment with some m-light modalities and then adjusted her, her, her, her lumbar spine. She wanted... The patient requested full spine adjustments 'cause that's what she's used to from her prior chiropractor, so we did.

So with no major complaints or anything, s- then some normal s- stuff, uh, we did a, a lumbar adjustment, and she re- she said, "Oh, that's great. I see why Carol loves your adjustments." R- rolled her over, uh, put her prone, uh, did a PDA adjustment, uh, thoracic spine, and heard a clunk on the adjustment, not, not the normal sound you feel.

She felt, she felt it different. There was a clunk, and the doctor, Dr. Gray knew, "Oh, no," right then. The patient claimed in pain, cracked a rib All right? So that's, that's a known complication for chiropractic adjustments. But Dr. Gray, you know, being the, the nice person that she is, she felt awful. "Oh my gosh, I'm so sorry.

We gotta get you to urgent care right now, get you some... get x-rays to make sure it's not displaced, and then get y- get you some pain cu- pain pills, 'cause you're gonna be in discomfort for a while. So get something for your pain, and then come back in and we'll look. And I'll pay for it all, just go to urgent care right now."

So that... Dr. Graves did that. That's... And, and then she, as soon as the patient left, she went to finish her notes, her treatment notes, and said, you know, "During the adjustment, I felt a different feeling. The patient had pain. There was a clunk. I think I, I suspect I, I fractured a rib, and I sent the patient off to the urgent care."

And then she wrote, "It was a normal adjustment," or, "It was a, it was a... When I did the adjustment, it was pretty normal, but because the, I th- because of the clunk, I think I maybe used too much force." And that's, that's all she said. So I get the r- So I, you know... The, the, the patient thinking that everything's gonna be fine.

The patient wasn't mad. She went off to urgent care. But this is... It was an affluent patient who had access to attorneys. And the next thing she heard from the patient was through her attorney, "We wanna make a claim for this rib fracture that you caused and admitted liability in the records." And the admission of liability in the records is, "I used too much force."

Um- Fractured ribs. Again, there's a saying out there that if you've never cracked a rib, you don't have a practice. I mean, it's something every, almost every doctor's gonna go through. Um, you do a normal adjustment and for some reason, it... something happens. It's a hands-on profession, your profession, you're pushing on the body, these things occur.

It's why it's in your informed consent. Uh, your informed consent discuss the risk of normal care and what can happen. Um, rib fractures are in every one of them, burns, things along those lines. They're there in every single one, and even perfect care, perfect treatment, that result can happen. Kinda going off of some of the other claims that we've talked about here.

Perfect, perfect care, perfect treatment does not mean malpractice. Um, for there to be malpractice, two things have to happen. There has to be b- a breach in the standard of care, and that breach has to result in an injury. There can be an injury. There can be an adverse reaction. You can break somebody's rib.

You can burn somebody during EMS. That's not malpractice. Again, you have to breach the standard of care. The standard of care is what an average practitioner would do given the same or similar circumstances, the same presenting symptoms. If they would've done anything differently or not, that's the standard.

What, what an average practitioner, not an exceptional practitioner, what an average practitioner would do. So it's a, it's a, it's a h- it's a tough burden for a, a patient to say that, or pursue a claim, a plaintiff to say, "Here's how you breached the standard of care," because, you know, it's, you, you have to prove you did something different.

And a, a normal PD adjustment on a thoracic spine that results in a rib fracture, it's just unfortunately gonna happen, um, sometimes. I've taken the call in my 25 years too many times. Um, but you know, it... so the, it's, it's understanding The, the informed consent and what it really means and paying attention to that is the way to get after it.

Like, I ha- I've, I've had burn cases very similar where it's an EMS pad where 'cause it's an electrical burn, it's not on the surface, it's underneath the surface, and then it works its way up when that necrotic tissue dies and comes up. So sometimes patients I- can get an EMS burn from one of... from a pad and not know it until the next day because that hasn't really...

The, the, the pain hasn't gotten there yet.

Jon Kec, Host

Okay

Tom Caswell & Zach Myers

And in those cases, the doctors has people on that EMS machine before, and they have machine-people on that machine after, and no one else was burnt, but this particular patient was in some way. And so we've seen... I've seen him in records where it says, "Well, no one was burned before or after, so we must have had the lead attached improperly or, or had it on too long."

Some- just a, a simple little note like that takes a case that we can defend into something that's gonna cost a whole lot more for a settlement and on your record because of those notes. So understand your informed consent and understand the known complications that occur, and know that that's just something that's gonna happen and be prepared on how to respond to that if it, if it occurs.

And certainly don't do anything in your records that could admit liability and make our jobs harder.

Jon Kec, Host

So we, we focused a bit on that, the records piece. I think I heard you mention after the visit or right at the conclusion of the visit, "Send her off to urgent care, get imaging, I'll pay for it." Did I hear you s- say

Tom Caswell & Zach Myers

Yep, she said that. Yeah. Yeah, we've heard that before too many times

Jon Kec, Host

is that at the same level as putting it into the notes? Or...

Tom Caswell & Zach Myers

Yes. It's, it's pretty close. It's, it, I mean, it's tricky though. The attorneys will try to use that as an admission of liability 'cause if, if you pay any p- any- anything outside anybody else, it can be used against you that you knew you did something wrong. You paid for those bills because you knew you were responsible for them.

So it, it, yes, absolutely, it can tie back for that against, against the doctor. So yes, y- you never promise to pay for anything. If you, you can reach out and say, "Hey, gather your bills. Once you have them, we'll talk." 'Cause then, and then call us, and we can walk you through the proper way to do that so it doesn't become an admission of liability.

You would need a release. The, it, you know, if you gave the patient anything, you would need a release to say in exchange for whatever it is. If it's a couple hundred dollar ER bill, that's all they

want, and to avoid the hassle and everything, if that makes everybody happy, your patient happy, you happy, you don't have a claim on your record, there's ways around that.

But make sure you call us so that we can help you navigate that, so it's done properly, and you don't do something that later on you pay for those bills, and then they still sue you, and then they use that against you, and you've already paid their hospital bills, and now they're suing you, and now we can't defend it, and now it's gonna cost more and bigger headache for you.

So yes, absolutely, be careful

Jon Kec, Host

So to clarify, potentially covering an urgent care bill like that isn't the problem. It's about doing it the right way.

Tom Caswell & Zach Myers

Correct.

Jon Kec, Host

Got it.

Tom Caswell & Zach Myers

Whenever a patient, whenever a patient asks a doctor for something because of something that occurred, whenever there's a request for re- for a refund- Mm-hmm ... for hospital bills or anything, there's always three options for every doctor. It's tell them, "Now, listen, I stand behind- I, I'm, I, I stand behind the care and treatment.

I don't think I would've done anything, anything differently to you that day. You know, for those reasons I, I can't pay those bills. I'm sorry. You know, I know you're upset, but, you know, talk, you know, try and talk about it." So tell them no in a polite way. Second option is, "Gather your bills. Let me take a look at them.

Once you have them all, if it's something I can handle, we'll talk." And then that... And then go from... We'll go from there, and hopefully that placates a patient that is on the verge of maybe having a claim or not. But then again, when that comes in, you're gonna ne- you can't pay them without that release, and we can help you navigate that.

The third option is, "Hey, I have malpractice insurance. Here's NCMIC's number. Give them a call." So it's no, gather bills, and if it's something you can handle, you wanna handle on your own, you can have an attorney help you write a release and get it done properly, and we can walk you through those steps. Or the third option, call us, let us run with it.

That's why we're here.

Generally everybody's doing a good job out there. It's just if something comes up, gives you pause or concern, call us.

Um, and that's why we're here. We, we have the, the experts to review cases, you know, and, uh, if you need a reassurance or, or a reality check, we're, we're here to kinda give you guidance on what to expect. Yeah. And calling us is not gonna generate a claim. Mm-hmm. So we'll, we ... A, a real claim will generate a claim.

We're just, we're, we're also your risk management, you know, here, and if we can help you avoid risks or help you avoid a claim, it's in your interest, it's in our interest, so let's work together to try and avoid that.

Jon Kec, Host

I tell people that all the time and I can't say it enough. We're a resource. Use us that way Maybe a little tradition, I think we did this last time, what are the Halloween plans for everybody and their family?

Tom Caswell & Zach Myers

We do a, a neighborhood thing. We have a kind of a neighborhood that's isolated, and, uh, we have all the kids in the neighborhood come to our house for a little pre-dinner, pre-party. Everybody dresses up, all that, the, the parents, everybody. We have a big, you know, bring your own covered dish or whatever you wanna call it, and, uh, a little potluck.

We feed the kids. Um, when 6:00 comes, when time to trick-or-treat, the, we send the parents out. I hold the kids back, and then at 6:00, I release them into the neighborhood, and everybody, they do their thing, and when trick-or-treat's back over, they come back to our house for libations and fun, and we have a good time

So we, we have a little one with us now. Last year we did the podcast, we were waiting for the arrival of our, our baby girl, and, um, so this year we're inviting the grandparents down. Um, we got costumes picked out for mom and, uh, myself, and then, uh, M- Miley, our baby. So we're gonna do our first walking around the neighborhood, um, Halloween, uh, activities.

We're looking forward to that, and, uh, it'll be nice to have the grandparents be part of it. So, um, it's fun, fun time of year for first holidays coming up.

She's gonna be a football. Um, and then I, I have a helmet. I played football in college, so I'm just gonna be a football player, and the wife's gonna be a coach. So

Jon Kec, Host

Yeah. So, uh, on our side, you know, new neighborhood for us. We moved back in May, so not quite sure what everybody here does. Um, it's still kind of an in-construction neighborhood too, so, you know, sporadically there's houses that either haven't been moved into, haven't been finished, whatever it is. So it'll, it'll be a little bit of a learning curve.

But, uh, the kids are dressing up. Um, our daughter is gonna be Elsa, or the Costco version of Elsa. We, we bought it not realizing it wasn't, like, a Disney official thing, so it looks like Elsa, but not exactly. Um, but that's okay. She doesn't know, and she doesn't need to know. Um, and our little guy, this'll be his, his first real Halloween.

He was, um, what, nine months last time. So we took him out, but we didn't dress him up. He'll be Bam Bam this year, so we're giving him a bat, which is probably the worst idea we've ever had. Um, but, you know, that's why we'll keep him outside, let him break other people's pumpkins and not our stuff. So we'll see what

Tom Caswell & Zach Myers

Right. Live and learn

Jon Kec, Host

Thank you both for joining us. Um, you know, Happy Halloween. Zach, enjoy the, the first year out. It's, The first holidays are crazy.

Tom Caswell & Zach Myers

Yeah. I'll s- probably have some extra candy this year. I'm sure she's not gonna be eating too much candy, so Bring it into the office. Yeah, there you go. That's right. So- Bring it to the office. Have a good one, Jon.

Jon Kec, Host

And that wraps up this year's edition of Claims from the Crypt. Remember, the scariest thing in risk management isn't a bad outcome or a tricky diagnosis. It's panicking, blindly trusting tech, or convicting yourself in your own clinical notes. If you encounter an emergency, call 911. If you run into a complication, document the facts, not the feelings, and call your risk management team right away. We live in a litigious world, so doing everything right doesn't always mean accusations won't come or the lawsuits that may follow them. Please remember, it doesn't always matter how careful you are. What matters is that you're prepared. Be sure to subscribe to Chiropractical wherever you listen to podcasts, and remember, you can watch the video version of today's episode on the NCMIC YouTube channel. If you have questions for the show, you can always email me at jkec@ncmic.com. you for listening. I'm Jon Kec, and this has been Chiropractic.