

ANATOMY OF A CLAIM

Mike Whitmer:

You're at work on a normal day. Somebody comes into your practice you don't recognize and they present you with an envelope. You've been served. What now? What's next? What should you do? What shouldn't you do? The decisions you make in this moment can have a serious impact on the outcome of your malpractice claim. Our guest today is going to help us understand what to expect when facing this situation. Shanna Patrick has been with NCMIC as a claims representative for over 10 years. Shanna works with doctors who are in this process of a malpractice claim every day. Her job is to coordinate the defense and help the doctor through what's typically a very difficult time. Shanna, welcome to Chiropractical.

Shanna Patrick:

Thank you. Great to be here.

Mike Whitmer:

Let's go ahead and start. We want to get into the anatomy of a claim and what doctors can expect when they're facing a claim of malpractice. So how does a doctor first learn they're being sued for malpractice?

Shanna Patrick:

Usually, there are some clues leading up to that moment. You'll have an unhappy patient who has maybe asked for a refund, they're alleging that your treatment has injured them. Usually, the records request is your first clue. Sometimes you'll get a letter where the attorney demands a sum of money, or you'll sometimes just be served with a lawsuit out of the blue, usually by a process server or a sheriff, sometimes certified mail. But those are really the four ways that you might hear that you're being sued or that a claim is being made against you.

Mike Whitmer:

What should the doctor do if they do receive notification of a malpractice claim or they get a request for records out of the blue? What steps should the doctor take?

Shanna Patrick:

We always recommend that you call NCMIC. We've got claims professionals waiting to talk you through this. We can tell you how to respond to the records request. Usually, as long as it's accompanied by a release form, we'll just advise you to go ahead and send the records. However, it is vitally important that you never do anything to alter the records, change them. It's very hard to defend a case if you've altered the records, even if you have great intentions. Especially once you receive notice of a potential lawsuit,



it can really look like you're being self-serving, trying to cover up your tracks. So we definitely recommend do not touch the records. If it is a lawsuit or another type of claim where we need to get involved, we would open up a claim or hire you defense counsel to defend you if it is a lawsuit.

Mike Whitmer:

I want to dig into one thing that you said there. You said, "Don't alter the records." What if I'm a doctor and I've learned I'm being sued? I pull the patient record because I'm going to send that to my malpractice insurance provider, and I look at the record and there are things I remember about the patient that are not in that record. You just told me, "Don't go in and alter the record." How do I handle that information?

Shanna Patrick:

Yeah, you can definitely tell NCMIC about this. Don't do anything until you talk to us or your legal counsel. If you go in and change something, it can look like you're trying to make things look a little bit better for you or trying to help your case. There are proper ways that you can make additions or changes after the fact. Usually, that's in the form of an addendum that you sign on the day that you're writing it. We still don't usually recommend that you do something like that, especially if there's litigation. Talk to your NCMIC claims professional first or your lawyer. Usually, if there is something that you forgot or you think is relevant, there are other ways that we can get that into the case through your deposition if this is a lawsuit or other methods.

Mike Whitmer:

So once NCMIC learns that one of our policyholders is being sued, what's our process? What action does NCMIC take to start this process of defending a claim?

Shanna Patrick:

If this is a lawsuit, usually our first step is we're going to select an attorney from our panel of attorneys in your state who has lots of experience with medical malpractice. The attorney will get in touch with you, meet with you, go through the process with you. Usually, what we would do next is start a process called discovery where we obtain medical records. The patient is likely alleging that you caused some sort of an injury, so we need records and proof, quote, unquote, "of what they're alleging." And that's done by subpoenaing records from all of their medical providers. We'd like to get records from before they even walked in your door to see what kind of condition they were in before, and it's just a exchange of information.

So after the discovery period, we would retain an expert, and this is somebody that would be your specialty, a chiropractor. They would review all of the information that we've exchanged during the course of discovery. And they would review it to see if they believe that you followed the standard of care, if there is any issues that we need to be concerned about. Sometimes we will also hire another type of expert on the causation side of things. Maybe if somebody is alleging a spinal injury, we'll retain an orthopedic surgeon or another type of specialty that will look at the records and give us opinions on



could you have caused this injury, is this something that preexisted your care. After the expert portion of things, we get a kind of bigger picture or a better idea on if this is a case that we could defend you all the way through trial or if it's a case that we feel might be best to be settled at some point.

Mike Whitmer:

Okay. I've got a couple of things I want to dig into there. First of all, you said that we're hiring attorneys, we're hiring expert witnesses to review the case, provide testimony. Does the doctor get a say in that? Let's say that the doctor has a relationship with an attorney, do they get to pick the attorney that's going to provide their defense?

Shanna Patrick:

Yeah. Technically speaking, the policy states that NCMIC and your claims professional will pick the attorney, and that really is in your best interest. We've got a panel of attorneys, they're all fully vetted. They have our full confidence. We know that they can defend you to our standards. Same with experts. Yes, we do sometimes take into consideration if you have an opinion on it. However, we just want to make sure it's somebody who's one qualified and choose somebody who's going to appear to be impartial. We can't have a golf buddy or somebody that already knows you trying to be your expert.

Mike Whitmer:

I want to dig into another thing that you said and that is that once we go through the discovery process and have all this information, then we have a better idea of is this case going to be settled or is it going to be tried before a jury. How is that decision made and what role does the defendant doctor play in that decision?

Shanna Patrick:

Yeah. The doctor is really involved in that process. Every policy with NCMIC has a consent to settle clause, so we would never pay money or try to settle a case unless those were your expressed wishes. So unless you say, I would like this to be settled, please try to settle it, we wouldn't do that. However, we always give you our input. We're always there to give feedback, what we recommend. However, if you decide, I want to be vindicated, I didn't do anything wrong, we've got expert support. I want to go to trial, I want this to play out, we would definitely defend you and support that decision. That's why that clause is in your policy. Because if there is a settlement paid, there are implications. We have to do a mandatory report to the National Practitioner Data Bank, which isn't necessarily a black mark on your record, it's just something that you might have to answer questions about at some point throughout your career. That's why we have that consent to settle clause in the policies.

But yes, you'll definitely have a lot of input into the route that it goes. Even if you consent though, that's not guaranteeing that we'll be able to settle the case because a lot of it does depend on the expectations of the patient or their attorney, but it gives NCMIC the ability to try to settle it.



Mike Whitmer:

Shanna, let's talk about roles and responsibilities. What's the doctor's responsibility and what's the responsibility of the malpractice insurer in these cases?

Shanna Patrick:

Yeah. Really what we're looking for from our doctors is just cooperation with the process. The attorneys are going to need to meet with you. We do our best to minimize the impact that this has on your practice and on your personal life. The attorneys really will take care of a lot of things on your behalf, but we really do need you to cooperate with the attorney, provide them what they ask for, especially during that discovery period where it's an exchange of information. At some point, you'll likely be requested to give a deposition, which is basically when you come together with both attorneys, the attorney for the patient, and your own, and you'll be asked questions. And our responsibility is really to just prepare you for all of that. We would have the attorney give you preparation sessions before the deposition just so you feel completely comfortable in everything that's going on.

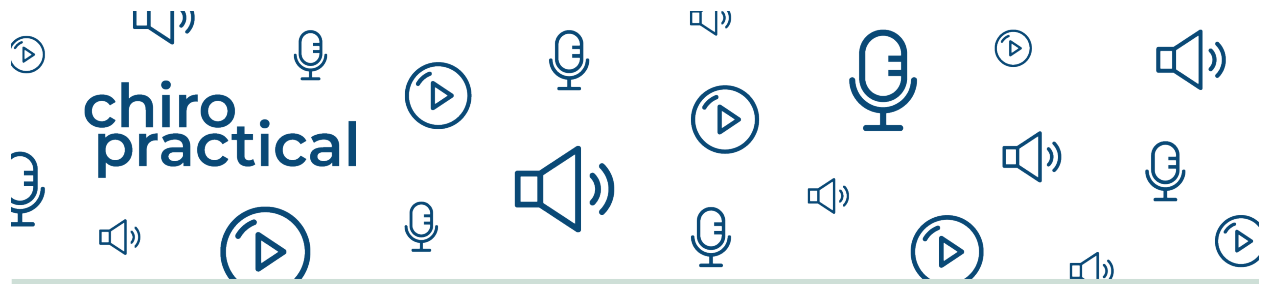
If there does happen to be a trial, we would expect you to attend the trial. Trials can last a couple of days to a couple of weeks or more, so it is impactful to someone's practice and we recognize that is... It does put you out, but that is one thing that we're expecting of you. I will say that most cases that are filed, do not end up in a trial. It's usually settled or dismissed somewhere along the way. Sometimes when we are looking to settle a case, we will also have a mediation is what it's called, where the parties come together with a neutral party to help us meet in the middle, help us settle the case, and usually we like your attendance at those as well.

Mike Whitmer:

A few follow-up questions to that. When talking about cooperation, I've been familiar with some cases in the past where the doctor has content on their social media sites, website, whatever the vehicle may be, but the content may not read well to a jury and to a court. What's the doctor's responsibility in those situations?

Shanna Patrick:

If we come across anything like that, usually when the attorney is meeting with you or doing some background with you, they'll look at those things and provide you guidance. If there is something on social media or your website that could potentially be damaging to the case, the attorney is going to advise you on that. And we'd expect you to follow the legal advice and do everything possible to give you the best chance of a defense. Doing things that purposely damage your defense obviously is in no one's best interest and that's why we hire these attorney. They know what a jury would be looking for, or even if the case does somehow get to your state licensing board, which can happen if there's a settlement, sometimes they look at things like this. So we're really just looking out for your best interest and making sure that you're in the best possible position that you can be in.



Mike Whitmer:

You said something about if there is a settlement, your state board is going to be informed of this situation. What are the circumstances that the licensing boards are notified that the doctor is involved in a malpractice suit or the doctor has gone through the process of a malpractice suit?

Shanna Patrick:

It is really state-specific, so I don't want to speak too broadly. But some states are notified if there is an opening of a claim on our side. And most states, however, would not know about your malpractice claim unless there's a report made such as with a settlement, the National Practitioner Data bank, or sometimes there are mandatory state reports when we settle a case. A lot of times too when you're re-credentialing with insurances or your state board, sometimes you have to reapply for your licenses every so often. A lot of times they ask about claims and obviously you have to answer truthfully that you had a claim or you paid a settlement on a claim. So those are a few scenarios where the state might know that you have a claim.

Sometimes we see patients who are unhappy with their settlement or unhappy that you're not settling the case and they can also directly report things to the board. Again, doesn't always mean bad things happen or there's a black mark, it's just usually you'll have to answer some questions about it, and we will help you do that. And your policy has coverage for an attorney to help you with any sort of licensing board proceeding.

Mike Whitmer:

So let's talk about the kind of evidence that's typically presented in a malpractice case and how can the doctor prepare themselves proactively for this process.

Shanna Patrick:

A doctor can really help themselves by making sure that they're documenting everything with patient encounters. Document a patient's chart as though it's going to be right in front of a jury. As thorough as you can be, it's always going to put you in a better position. Usually, the biggest pieces of evidence are going to be medical records, which obviously we've talked about. You're never going to alter those. It's very difficult to defend a case if they can prove that you've altered a record. The expert testimony is really important as well. Juries like to hear from people that are licensed in this, other doctors that have more specially trained knowledge than they do. That's an important piece, and sometimes it does boil down to a battle of the experts and which experts they like the most.

We also can utilize social media quite a bit. More and more, we can check on the patient's Facebook, social media, TikToks, all of the platforms. If someone is saying their life is altered, they can't do anything, but then they posted a video of themselves water-skiing. That all is something that we can gather throughout the course of discovery and use at trial against them to show the jury that they're not being truthful. So those are just some things that could be introduced as evidence. If you do happen to have any sort of little social media evidence that's always helpful. We do see sometimes doctor's



business pages, Facebook friends, or Instagram friends with some of these patients and they can get some pretty good information that way because a lot of times once a lawsuit is filed, their attorney will tell them to take it down immediately. So the sooner you can get that kind of stuff the better, but we also have professionals that can seek that information.

Mike Whitmer:

What are the possible outcomes of a malpractice claim? What are some of the things that a doctor may end up living with as a result of this malpractice process?

Shanna Patrick:

Like we talked about, settlement is a valid outcome of a case. If a doctor decides that they would like us to settle the claim, we always have the patient sign a release. So just settling a case isn't an admission of liability. We include that in the release paperwork that there is no admission of liability and settlement is strictly to avoid the costs and uncertainties of trial or litigation. If we do pay a settlement like we talked about, there is a National Practitioner Data Bank report. Really all that amounts to most times is that you'll just be asked some questions. We're always available to help you answer those questions. Again, with the licensing board, that's another impact that could occur. Usually, we work into settlements that the settlement is confidential so the patient can't turn and publish it in the newspaper, tell all their friends, put it up on social media.

If they were to do that, then we would have a breach of contract action that we could file against them. So we like to keep this... So it's a confidential settlement, it's not something that's going to be publicized. Other outcomes, if we take this to trial and the jury believes our side and rules in our favor, then we would have a defense verdict and end up paying nothing. There's no settlement paid if we win the case at trial. We would pay all of your defense costs for that, that is not something that is ever put against your policy limits. We would pay whatever we deem is reasonable and necessary for a successful defense on top of your policy limit.

Mike Whitmer:

Shanna, you explained to us the consent to settle clause and what that means to the doctors, but it's my understanding that not all consent to settle clauses are created equally. What do doctors need to know about their consent to settle clause in their malpractice insurance policy from their malpractice insurance provider?

Shanna Patrick:

Yeah, you're right that not all consent to settle clauses are the same. There are some other carriers that have clauses where the insurance company can override the insured's decision not to consent to settle. We always follow the consent to settle clause and the policy. It's completely within your control.



Mike Whitmer:

Shanna, what kind of limits do we put on the amount that NCMIC will spend on that defense?

Shanna Patrick:

There's really no limits to what we would spend or what we would do to defend you. Our attorneys are, like we said, vetted attorneys that have the experience. They have the connections. They know these experts. We've paid for people to take your adjusting table to the trial room so that the jury can see the table that this occurred on. Anything we need to do that we think would be beneficial to defending the insured, we would do.

Mike Whitmer:

Shanna, this has been a great conversation. Thank you for doing this. As a claims professional in the liability arena, what would you like our listeners to know about this process and how they can protect themselves?

Shanna Patrick:

I think what is important to remember is NCMIC is always there for you. We have a lot of experience in our claim staff, and we would much rather you call us proactively rather than reactively. If you have something in your gut you feel wasn't right, you think a claim may be coming down the pike, we always prefer that you give us a call even to just talk it through, just so we can provide you with that advice. The earlier you can involve us, the better. If you have a patient who you have a bad feeling about, you think they might be the type that is always unhappy with their medical providers or lots of complaining, things like that, give us a call and we can talk you through if you decide you want to dismiss them from your care to prevent something like this from happening.

Mike Whitmer:

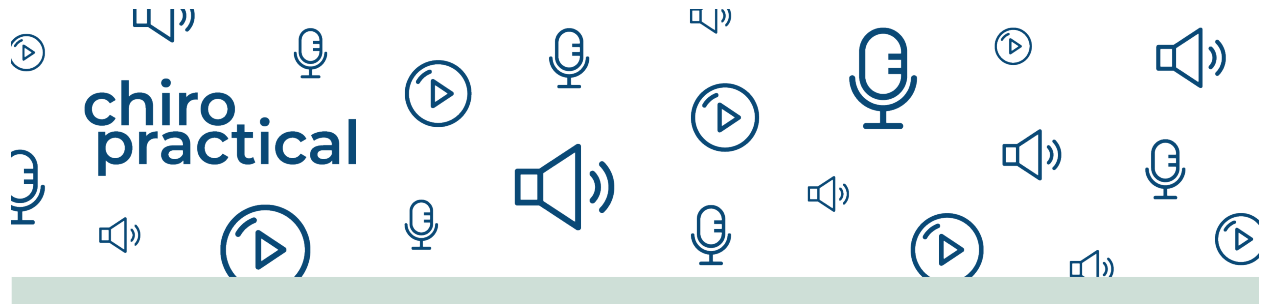
Shanna Patrick, thank you so much for talking with us on Chiropractical.

Shanna Patrick:

Thanks, Mike.

Mike Whitmer:

It's time for Ask NCMIC where we take your questions and have experts provide answers. Today's question comes to us from office manager Lisa in Virginia. Lisa asks, "I've heard there are ways to connect our patient payments with our ledger on our electronic health record system. Currently, this is a manual process for us and it takes a lot of time. What are the options available?" To help, we've asked Chima Igbokwe. Chima is a senior merchant sales representative in NCMIC's merchant processing division. Chima, I understand we now have a new solution for practices like Lisa's.



Chima Igbokwe:

Thank you, Mike. What we have available for our doctors is our NCMIC Practice Management Bridge. Through recent studies, we found out 54% of patients would like to manage their healthcare payments digitally. Our goal for this solution was to help our doctors alleviate time it would take to manually enter those transactions into their EHR ledger. With our solution, it gives you the ability to run those transactions and have those automatically post. And some of the key features that we have are text-to-pay options, contactless capabilities, automatic posting, digital patient registration, flexible payment plans, and customizable messaging, including invoicing and text options.

Mike Whitmer:

Chima, thanks for talking with us. Great information.

Chima Igbokwe:

Thanks, Mike.

Mike Whitmer:

If you have a question you would like us to address on Ask NCMIC, please shoot us an email at askncmic@ncmic.com. Thanks for listening. Before we go, we've put together a list of dos and don'ts for you in the event that you're facing a malpractice lawsuit. The list is on our website, but to make it easy for you to find, we've posted a link in the show notes of this episode. Also, if you are enjoying Chiropractical, please consider giving us a rating on whichever platform you listen from. Thanks for joining us, and talk soon.