Introduction to Scott and Functional Lawyer

You know, there's nothing makes me more nervous than talking to a lawyer. But in this case, I walk in and so scuttle out again as the founder of the Functional Lawyer.

I actually, he is the functional lawyer and the co-founder of Origins Incubator. He's a licensed health care attorney and a co-founder of a functional medicine practice with his wife, Linda, a dog.

And Scott helps investigate, functional medicine providers, establish solid business and legal strategies and plans and structures so that they can, have access to all the things that they truly need to decrease the risks of practicing medicine, being on social media, websites, and etc..

Scott is a nationally recognized speaker, author, attorney, and business consultant for innovative health practices. So the reason I have him on is because, those of us in integrative health tend to take on a lot of different challenges as not traditional.

So if anybody knows about risks, it's Scott. So no matter if your integrative health professional or, any other type of medical professional, you got to listen to this.

This is something that's truly crucial and probably one of the most important things that you can possibly learn in practicing medicine to keep you and your family safe.

I Scott, welcome to the summit. So happy to have you here. Yeah. Thanks for having me. I'm happy to be here. Yeah. So, your, your origin story or your hero story is a little interesting.

So, well, let's let's just start. How how did you become into this sort of news as an integrative health lawyer or functional lawyer? Yeah, probably like a lot of providers.

It kind of came through personal journey. So this time it was second hand. So my wife went to an IFM conference, about seven years ago now and, you know, got the bug like like most of them do.

And, started her practice about six months to 12 months later. And at the time, I was working at a big law firm, a white shoe firm, you know, lots of money, but lots of time away from my family. And.

Right, right. Yeah. Two young kids. And she started her practice. And so each night after I chugged coffee all day and didn't really eat that well, I'd try to help her, like, set up her practice on the couch at night before passing out.

Well, fast forward a couple years, and, I'm burnt out, right? We're talking about burnout here. So I'm burnt out at my firm, and, I'm looking for something else.

And so I really was looking for a smaller firm trying to help entrepreneurs when kind of a crazy opportunity came up with the evolution of medicine. And so I talked to James Maskell, and I ended up working with him and Gabe and Julie for a few years, kind of helping with practitioner support and, you know, engaging on their practice accelerator.

And in doing so, I came upon the realization that that we had with my wife, when I was at the firm, we went to the health care attorney upstairs. So big firm downtown Orlando.

Offices all over the place. Ackerman, if anyone knows them. And at the time, I was doing commercial litigation. So I'm not health care law at all. So we went to the healthcare partner upstairs and said, hey, can you help us out?

After paying what was a lot of money at the time, about $2,500. He didn't help us at all, and it's not really his fault. So I'm quick to clarify that lawyers, I don't know what functional medicine is or how to address it.

It's not their fault. They just haven't had the training or exposure. Much like many PCP that are kind of skeptical of integrative or functional medicine, just don't have the exposure, right?

So we paid him the money and he said, well, I don't really know how to help you. Do you have any templates or anything or documents I can review? And so we were like, no, that's why we paid you.

And how about our same firm discount? But, so anyway, I, I was so burnt out and I the opportunity came up and so I just said, you know what? I can always get a job in law.

Let me explore this with with evolution of medicine. So I ended up doing that for about a year and a half. And then I realized that, you know, nobody was covered legally.

I was talking to doctors every day, and that when they would see my initials managed after my name, they would start asking me legal questions. And what I found was, well, yeah, what I found was, you know, someone bumps into at a cocktail party, you got to answer medical questions, right?

So, what I found was a couple things were happening. People like us tried to find a healthcare attorney, and it didn't work out, but healthcare certainly didn't know how to address their issues.

Number two, they went to somebody that said they understood it but ended up paying, you know, 20, $25,000 for the whole set up when everything was said and done.

Or they did neither of those two things, and they just asked a bunch of colleagues on Facebook or at conferences, or they grabbed one from whatever training they went to last and kind of called that a day and said, this is good enough.

But the problem with that is what, that last one, which I call, the world's worst law firm, Facebook, Google and Pierce LLP, is that they they don't know what they don't know.

Right, right. So even today, I had a couple of appointments and people I said, what's your plan for HIPAA? And people said, well, I've got a notice of privacy practices and my EMR is Epic compliant.

Well, that's really the tip of the iceberg.

How Scott Entered Functional Medicine Law

So it's a long story. And trying to make it shorter here is that, you know, I decided this is something that I need to address. It needs to be affordable, and it needs to be kind of comprehensive.

They need to know why they're doing these things. In addition to having the tools like templates or, or documents in place. So I founded Functional Lawyer in consultation with a firm here in Florida that wrote our the documents and reviewed what I had at the time.

And, wrote them to be as applicable nationally as could be, and then came up with an education curriculum for, for providers, because this isn't your specialty, it's mine.

And so you don't need to pay $25,000 for, what I understand to be horses instead of zebras. And so I'm not here to take the place of an attorney when your needs are acute or when the situation calls for it.

But you don't need to to pay 500 bucks an hour for learning the difference between an LLC and an S-corp. Or why you should use an informed consent, or why you need to do more than just have a notice of privacy practices for your HIPAA policy.

So now and not very short, but that's kind of how it kind of came to be, just kind of through my wife and then through discovering that there was a need and then trying to fill it.

This is confusing to me. And I'll tell you why. And, you know, we have multiple types of audiences that are listening to this, not just integrative health and stuff like that.

This is confusing to me because, you know, I feel like health care attorneys are should be very well versed in health care, and health care should be delivered in the very similar way.

What is so special about this sort of field of functional integrative health? From a legal standpoint, that's different than, you know, other practices?

That's a great question. And the answer is not that much. To be honest with you. So hemp is the same no matter what. Telemedicine laws are the same no matter what.

Hiring people, firing people. Those are the same. Although that's actually employment law. That's all the same. Setting up a corporation or an entity, right?

Anybody could do that. Where it kind of gets different is really in the delivery of care. The pricing model and, the modalities that are that are happening in these offices.

So, gotcha. If you say to a normal healthcare attorney or a conventional health care attorney, they're not going to know what that is. If you talk about ozone, they're not going to know what that is, except for, you know, our environmental, issues that we all grew up with in the 80s.

90s. Right. So, that's really where the rubber meets the road is interactions with patient. So now if you're outside of the insurance model specifically or particularly, you actually have to do customer service and worry about refunds.

And now you have to actually do marketing instead of worrying about your, your insurance plan and just kind of feeding you people, feeding you patients throughout.

So it's a little bit different in the claims you can make. You are very much still a minority in the functional, integrative world. As much as we know that it's growing each day, it is still medically, not conventional, so are not the majority.

So this kind of the business aspect of it between customer service and then when the medicine gets delivered, making sure that, then the medicine that's delivered is, you know, backed by evidence and then that the patient knows that and the patient is kind of has their eyes wide open to anything they're walking into.

And that is actually where the most liability occurs. So, yeah, I can imagine the, you know, the, different, different practices set up things differently.

The fee structure is different. You know, I'm in an insurance based practice, officers with different collections different, you know. But I think that we have to all learn the lessons from who really carries the highest risk or in very unique markets and the utilize that as sort of worst case scenarios and then build upon those things.

So you prepare for the worst. But then that way, whatever, whenever the best comes, you feel much more satisfied with it. And there's a sense of security.

And that's, that's something I appreciated, very early on, with the, my own company, my own practice. But now it's something I, I truly appreciate. And so tell me this then, you know, I, I myself currently probably have a lot of myths, about the, the space that you're in.

So tell me, what are the biggest myths that you kind of hear from your practitioners? Yeah, there's a few of them. And before we get to that, you mentioned, like, kind of, peace of mind or sense of security and.

Yeah, I know that, you know, people that are reluctant to invest and they want to go to Google or Facebook, invest in their own legal security, are reluctant to because it cost some money.

And it's it's not free. Right. But it's almost like being a patient, of a functional medicine or integrative medicine practice. Right? Like, you can continue doing what you're doing.

Or if you if you want help, you kind of need to be proactive about it. And I say sense of security because this kind of this theme comes up over and over where, you know, and this may not be everybody, but some practitioners, and I would say a lot are kind of scared to market themselves to get, you know, quote unquote, too big so as not to attract attention to themselves because they're not actually sure they're not confident or they're or secure in, in how they've set up their practice.

But I want to answer your question about myths. So it's the kind of dovetails. And so the biggest myth that I, that I see is that, you, you can see somebody wants and then they can find that the rest of the world and then you can continue seeing them.

Right? If they fly to you, then you can practice across state lines or even practicing across state lines. There's a lot of misinformation about that.

But, to be clear, when we were talking about that sort of thing and telemedicine, which is like the biggest question that I get these days. The fact of the matter is, if the patient is located in a state in which you're not licensed, you are breaking the law, committing a criminal offense by practicing medicine across state lines.

End of story. If you're not licensed in the state where the patient is located. I'm going to repeat it again. The patient is located, it's it's a crime.

And there are civil penalties as well. Now, I know and, you know, saying that there are lots of people out there that still do it, right. They practice medicine across state lines.

They're definitely not licensed in more than one state or definitely not, you know, more than a handful of states. And, you know, that's the second question.

I get the first is how do I practice across state lines? And so I have to kind of shoot that down. The second is, well, what about so-and-so? Well, so-and-so is probably not doing it correctly, right?

Lots of people drive 80 miles an hour in a 70 mile an hour zone. Just because they haven't been pulled over doesn't mean you won't be right. Absolutely. Yeah.

So my answer is there's enough people in your state usually, unless you're in the tiniest of states, there's enough people in your state to go around and fill up your schedule as a solo practitioner and even as a 2 or 3 person practice.

There's plenty of people. And in fact, lots of states now are lowering the barriers to get licensed. And where I live in Florida, they passed a law in 2019.

So pre-COVID, and it's on the statute, so it's not going anywhere for a while. That doctors and practitioners of lots of different levels can get a license to practice telemedicine in Florida if they're licensed in another state in the country.

And it's it's free to do. The state doesn't charge you any money. You may incur a fee from your own state's licensing board to, you know, forward your records to Florida.

And you do need to have a registered agent in Florida. And if you don't know anyone here, then you may have to pay between $35 and $50 a year for that.

But that's it. So between your own state, let's let's just say 10 million people and Florida has 23 million people or 22 million people. You can fill up your practice with about 300 patients.

Right. And, you know, I've done the math there. If there's five patients a day for most functional practitioners, that's 1250 patients license a year.

If they all come four times, that's 300 patients, or just a little bit over that. So, I actually have a guide, a free guide that people can download. From, from my website is functional lawyer.com/florida functional lawyer.com/florida.

It's it's a six step guide. It's a free PDF. You can take it get your license. And my members my clients tell me it's very easy. It's only takes a day or two.

So there's no there to to get a state medical license. That's almost unheard of before. Yeah. And you don't have to pay $800 to some clearinghouse to, to kind of kind of do your background checks and all that.

They just kind of take the word of your, your home state's medical licensing authority. And that's it. Now, don't call me on the day or two, but it's pretty seamless.

So let's let's go. Let's run a little bit because you said something really important earlier, about crossing state lines. What if it's an established patient in your practice that went to another state on vacation?

You're doing telemedicine with them because they got Covid, and so is that is that a situation where it's okay, we're still not a okay thing? Well, you threw the Covid in there at the last second.

And so I have an answer until you do that one. Yeah. So most states have what's called an exception for infrequent or episodic care. Okay. So in the case where someone is on vacation.

Sure. Absolutely. You know, they're a resident of your state, that's their permanent residence, and they're there, you know, 358 days a year, except for that one week vacation they took.

Right? Right. Where it gets a little more confusing is where there are snowbirds involved, or a kid goes to college out of state. Or you have a patient and they move away.

So what's happening with telemedicine is kind of the same thing that happened with Uber or Lyft, right? So industry is outpacing the laws that were written for an old model or old analogy.

Right. So Uber and Lyft, if anyone recalls, had to go into each city, city by city and help them write ordinances for ride sharing apps. Before that, the taxicabs had a monopoly, and it was really expensive to get a taxi cab license or a medallion.

In New York City, it was like 300, $500,000 for one taxi cab. Uber shows up and a taxi cab companies are upset, right? And they said, no, no, this isn't that law doesn't apply to us.

Why Functional and Integrative Practices Need Specialized Legal Help

We're not a taxi cab company. We're not a livery service. Which goes actually goes back a few hundred years. But, we are just a ride sharing app. That's it.

And so they had to spend lots of money writing the ordinances, city by city, to kind of address some sort of regulation around ride sharing that wouldn't make the taxi cabs too mad and, would help Uber and Lyft, you know, give the people what they wanted, which was a new service that was a little bit more functional.

So with telemedicine, what's happening is that industry is outpacing regulation. Now, one of the silver linings with Covid is that the state legislatures and the medical boards, they're all paying a lot more attention to telemedicine these days.

If you ask me about the biggest myth earlier, the biggest myth in the last 18 months has been, oh, it's Covid. We can just practice across state lines whenever we want.

And that's absolutely not true. Same thing with when, the state or government said Medicare. It could be practice across state lines, either ignorant or lazy.

Journalists kind of made the headline, or maybe they're just looking for good headlines that, oh yeah, you can now practice across state lines everywhere.

And people that don't know to read for the fine print kind of took that at face value. So, practicing across state lines is, is one of those things where, you know, I hope the silver lining from Covid is going to be within 5 to 10 years.

There'll be more states like Florida, where all you have to do is register and verify that you have a license. You're in good standing and you have malpractice, right?

And you can practice in each state. As it stands right now, though, you know, Florida is one of only 10 or 12 states that even have some form of this in Florida and West Virginia actually are two of the most liberal as far as there's no restrictions.

Other than you can't open an in-person practice in the state. So West Virginia and Florida's laws are very, very similar. By contrast, Texas has a law, that allows telemedicine practice.

And you're in Texas. But if you're an out-of-state provider and you want to get a telemedicine only license in Texas, it's you're really limited to the interpretation of diagnostic testing, for which the results have to be forwarded to a Texas provider or for the continuity of care, the majority of which happened outside of Texas.

Yeah. So if I so let's say your question where somebody, lives in your state, let's say Florida, and they move to Texas, and I've been seeing them for ten years.

Will that and then it might apply to me Texas license. But for the majority of providers out there today, it's not even worth applying for that license.

So long story short, I hope that in the next 5 to 10 years and a lot more states will adopt kind of open borders like this, but for the time being. My recommendation to most people is just to focus on your state, you know, get your Florida telemedicine license.

And then that's 30 million people to jail from. And now, hopefully not everybody at this summit will go ahead and compete for the same patients. But I still think that, there's enough to go around for everybody.

Oh, yeah, I think there's there's definitely plenty. And, and, you know, this this whole issue of crossing state lines is such a murky area. And, you know, I've actually paid, lawyers to, define this for us in our practice.

And it's three different lawyers for three different hopefully different answers. So I feel like and this is in the height of the pandemic, which technically is right now, we're still the height of the pandemic, but this is during the height of the confusion of this.

All the CMS changes that came out like day after day after day during I think it was April, April to June, like there's just so many changes and billing codes and all this stuff like that.

And so, so it becomes, you know, very, very, very stressful, doing stuff like this. And not only that, you know, I think a lot of our, a lot of our patients, come out from, from, from outside of different states, too, but generally they're there in in-person and they're staying at a hotel or something like that. Right.

But once again, the location is actually within the state. So so we understand that. And a lot of times they want to follow up on, on telemedicine, which makes that makes it pretty tricky.

You know, if they want to follow up on telemedicine, they come, you know, once in a while. And I think every state have different, different laws. Test is specific guidelines, for for that.

And it's still still a gray area. But you're right. I think that just to just out of the safety of the practice, you know, practice within your own state, is probably the, the best bet, you know, do do the things that you don't regret.

Right. That's that's my that's what I learned in life. So. Yeah. And you know, there's other options too. Like I always recommend, you know, you're, you know, lots of people.

And I don't mean to degrade anybody, but lots of people are self-important, and they feel good when some people are. They're getting calls from all around the country, and some people across the world, and they're like, but these people need me.

I'm like, yeah, that's that's great. And I'm sure you're a fantastic doctor. And you treat your patients well and you get great results, but it's still against the law.

And so what I recommend is that, listen, you know, create an online course, a little education curriculum. You can make it free, or you can charge for it.

And so long as you're kind of just educating, like in prerecorded videos and you have a little bit of a curriculum like that's fine. Like you can go on YouTube and talk for hours and hours and hours, one directional and be educational.

But when you get to start the practice of medicine, which is really not that far from just kind of having a one on one conversation from somebody, because your brain is the practice of medicine, then then it starts to be a little bit tricky.

But yeah, I mean, there's a there's a lot of options out there to, to not do things the wrong way. And like you said, do it the right way and you probably won't regret it.

Yeah. You know, that's that's exactly what they did during the pandemic. We also open online university. It's free. It's still free. It was only supposed to be free during during Covid, but it was actually a pretty good funnel for us. So.

So it's still free and people can learn about autoimmune disease, gut health and all stuff like that. And it's, we had about just 120,000 people on the platform.

So it's very, from all over the world. And so, and, and that's been pretty good. So now I'm going to open this can of worms, as you did the first, YouTube, social media in general, you know, are there specific disclaimers or, or something that we should put up specific to social media?

Because, you know, on a website at least you can click on privacy policy and everything's not listed there. But social media is like the there's nothing there except, you know, your face on a screen.

Other specific disclaimers that we should put, especially when it comes to educational services. You know, it's hard with social because as anybody with with accounts knows, each one is slightly different.

And in space you get to put about us or the terms is different in each place and they're always changing.

Telemedicine Across State Lines and Licensing Rules

And two, there's no magic words like, that, you know, a lot of people think that in law there's a lot of magic words that if you just say this, you'll be covered.

And I think there's magic words. I guess I'm wrong, but there's no magic words. Very, very few, very few, or at least fewer than people think there are.

Like a magic maze that will require, absolve you of all your sins. But generally, if you kind of just remind people and it doesn't take a whole lot, to say, listen, this is for educational, informational purposes only.

Always check with your physician before engaging in a new, you know, regimen of supplements or dietary changes or a weight loss program or anything like that.

And so, you know, these are these are words that most of us know just from growing up and watching infomercials about the Thighmaster and Bowflex and you know, who's who's latest P90x, you know, all those guys.

And so you know the language and you don't need me to do it. I have social media disclaimers and you can you can kind of ask me for them or they're at functional intercom.

But really if you just keep it that simple and, and say, this is for educational informational purposes only. And then also in our disclaimer, I have a disclaimer for a website as well.

So I'll kind of just talk about that as well. And yeah, let's, let's dive right into the website, because there's a lot of sites that I see with disclaimers as even outdated.

Some of them have templates that says insert company name here. That's still on there on the website that I've seen. So but let's talk about how important those disclaimers and privacy policies are.

Yeah. So particularly on our website. And you know, what I recommend to my people is just take my website disclaimer and then kind of cut it down into wherever it'll fit on the, social media channels.

And if you don't have enough room, just put a link like skywriting.com. That's okay. Skywriting.com/disclaimer and you can go for full disclaimer see here.

You know, educational informational only for full disclaimer, see our terms here. But on a website, you know, it also covers things like, hey, if I put a link to a third party site, I'm not responsible for what that third party does and collects.

And that's more of the privacy policy. But as a disclaimer itself, you want to make sure, hey, if I said something about you know, really hot topic right now is ivermectin.

If I said something about ivermectin in April of 2020 or 2021, that information gets outdated really quickly and so there's a clause in the disclaimer that says, you know, we make our best efforts to make sure that this information is accurate and as up to date as possible, but we can't be held responsible for, you know, changes in the science or changes in, you know, medicine or the prevailing wisdom of the day, sort of thing.

So it really kind of provides and these are all, you know, speaking of ivermectin, this is these are all kind of like building blocks to kind of build up some security, for, you know, one thing is going to protect you like a bulletproof vest.

But these are all kind of layered and just kind of layered approach to, you know, reducing your risk. And nobody's going to reduce your risk to zero, ever.

But there are a lot of strategies you can do and layer in that will reduce it. And, you know, you think that nobody's going to sue you based on some blog you wrote on your website.

But, you know, we have everywhere examples in our lives of dumb losses that you would never think that now have changed how companies operate. Like, you know, the McDonald's coffee scam, lawsuit is a big one now, McDonald's and Dunkin Donuts and everybody else says caution.

Really hot coffee on every lid, right? Yeah. So when it comes to website, the disclaimer is huge. The privacy policy. And and that's where any industry really, really kind of deals with cookies, how you're using users data, whether

you actually collect people's information, affirmatively, like you ask for their name and email address, or if you don't do that, you're still collecting their their cookie crumbs, their data anonymously in the aggregate.

And you also need to let them know about that. It's particularly important if you live in California or you have people from California visiting your website, which is probably everybody, to have a good privacy policy in place, because California's rules, closely mirror those of Europe, the EU, with the GDPR regulations that, you know, people may or may not remember from 2018 that took effect and kind of gave a lot more people, a lot more consumers rights over what companies can do with their data.

So a lot to think about. Oh, well, I can think about that no one thinks about. Right. Yeah. And so, you know, this is all sort of protecting yourself legally just from, online standpoint, social media standpoint.

But let's talk about the practice for a second. All right. So let's talk about private practice. So yes, we talked about a social media. We talked about the website, the privacy policy.

There's disclaimers. Let's talk about what's traditionally is in a medical practice like the HIPAA releases and what other safety nets. You really have to protect our practices.

Yeah. I mean that's a great question. That's what I do all day. So HIPAA specifically is HIPAA is HIPAA, whether you're a conventional, medicine like health system that has 46 outpatient clinics and like a little metro area, or you are a one person solo practice doing functional medicine.

So hipa it doesn't change anything. There are a couple of things that they'll take into account your, your income and how able you are to to put some specifically for the security rule.

But for the most part, the privacy rule is applicable across the board. And the security rule most mostly as well before, integrative and functional docs.

How you protect yourself is, you know, I mentioned earlier, the biggest liability comes from the patient agreement. You know, how you structure your practice, how you're getting paid.

And and what I think is the most important is the informed consent. And so I'll start there. Informed consent, as you all are probably familiar with it, from maybe anesthesiology or surgery.

And, what I do is I recommend that everybody in the integrative functional space have every patient at the first appointment go through the informed consent process.

And the reason for that is there are, you know, more than any other area that that I teach. There are examples of lawsuits that people didn't get informed consent from a patient, and they ended up getting sued, and in some cases having $1 million settlements or jury.

Jerry awards. And so let's talk about that for a second. So the informed consent is a conversation that you have with a patient prior to engaging in a protocol or, you know, a plan of action for their health.

For most lifestyle medicine providers, it's going to be low risk, you know, medicine that you're practicing. However, as I mentioned earlier, you know, we are still in the minority of of medical providers.

And there are a lot of skeptics out there. I mean, you know, don't look now, but if you go on Wikipedia, functional medicine is listed as a pseudoscience.

Pretty negative on there. And so that's kind of the world we're living in. So we're getting more acceptance, but there's still people and maybe some of the watchers or viewers can attest to this that have a patient, the patient goes back to their PCP, and then they come back to you and say, well, my PCP said that's not standard of care.

So why did you recommend x, y, z? And so, you know, having the informed consent is great, but being able to

answer that question is even greater. Right.

And so that's part of what you talk about in the informed consent process. Like. All right. So there are some risks to this. You know, there's definitely a lot of benefits, but there's there's risks too.

And you have alternatives. You don't have to see me. You know, you can continue to do nothing. You can go back to your conventional docs, you can see me and I'm not here to talk you out of going to conventional docs.

So that's a huge one. Don't coerce people or try to sell them on your services. And so you have that conversation and then just as important as having the conversation is memorializing it.

So you memorialize it with the informed consent document. And then that just kind of recaps what you talked about. And the patient agrees that they had an opportunity to ask you questions and they fully understand what's happening.

And they also know that they can revoke their consent at any time. And so that's number one for proving that you have the conversation. And that's huge.

And that comes up a lot for somebody that is wanting care, but their spouse is not a believer in it. Or they're they're elderly and they want the care.

They believe in it. But they're adult children don't trust you, right. Or they especially if somebody is, you know, going through some cognitive decline and you're doing some reticent protocol, you want to make sure that both that person kind of is there for the conversation.

And to the extent that they're comfortable, either a personal representative or a spouse or an adult child of them are also present for the conversation, because you can open up a can of worms where you're treating this person for cognitive decline.

You said you've had a conversation with them and they signed it, but then that's not hard for any attorney to go. Well, how do we know they had the mental capacity to sign this or that?

It's okay. Yeah, I understand what you're talking about. Right. Yeah. And so, and so that's huge to just to be able to prove it. And so that's another specific example where you want at least maybe one other person to kind of be present.

But so I recommend that for, you know, everybody that walks through the practice, whether you're just giving lifestyle recommendations or not, and then having, you know, a modified version of it for something like, deletion for something like I. V.

infusions, something like hormone treatment, and or if you're going to prescribe ivermectin, something like that. Definitely. You know, that is a very controversial at the moment.

And the science is kind of, you know, debated or not conclusive.

Social Media, Website Disclaimers, and Privacy Policies

You know, we're not even near a consensus. And so I know a lot of people really believe in it, and I know a lot of people really don't. So you want to make sure that you tell that to the patient and that they sign something, that they understand that before you go ahead with that.

Yeah. You know, I kind of advise all the doctors, it doesn't matter what type of doctor they are to have these systems set up, whether they be practice in the traditional practice or integrative health practice or anything like that, is because after the, after 2020, I think all of us are taking at least some risk.

And I think that, what you said was have this agreement and there's agreement, you know, set up of the things that you do, whether it's within the scope or, sorry, within these the standard guidelines, or maybe you're going outside the box.

I think that, the box is no longer defined as of as of when the pandemic hit. And so I think that in order for, for best practices, it's right now, I think we're in the and we're in the world where patients are kind of googling everything and to really have a choice of who they want to see.

So I think a lot of doctors are awesome. Now my wife's an ob gyn. So from an ob GM standpoint, people are shifting when they're pregnant. They're literally shifting between joy and doctors and, and, and pregnant women tend to have different, you know, written down birth plans and stuff like that.

And they want to figure out, you know, who's that, who's the right one. And then I and I always hear that, oh, you know, this gynecologist that this obstruction is going to cause didn't want to do this on my birth plan, but this one will.

And what's up with that? Right. So I think the we're in the era where there's a lot of things that patients will be googling prior to them seeing you.

And if if it's all about perception, I think that even if you're practicing within the specific guidelines, if they perceive you not to be, and that can create some issues to and whether a lawsuit is successful or not, it's always going to be a lawsuit.

I feel like. Right. And I know, and I'm in Texas, it's a little bit different, but some other states, you know, it's the minute that they there's any inquisition even, you know, not necessarily a fault.

It is a lot to go through from, from, malpractice point of view, you know, so I think the, what we're seeing from here on out is an evolution of, of of not not the way we practice medicine, but the way we, we, we communicate with the patients because their first information that they gather is going to be from the internet.

And you can't control what states perform or what website they get their information from. Right? It could be at the New York Post, which is, you know, it's pretty much a tabloid, right.

Or it could be, you know, from, from from the CDC and you have no idea. So, yeah, I think it's all of us setting up these lines of, protections. And as you're talking, I really have to go back into our documentations and refresh it for the pandemic era, because we created back in 2017.

I'm like, okay, I can think of a few things to put in there. So I want to thank you for that. Yeah, absolutely. You touched on a couple of things that that, I want to address to you know, in that in that same way is that, you know, there's one ob gyn that will do it one way and one that refuses to do it the other way.

And and they're both within the standard of care. And that's fine. Right. You know, you can make medical decisions. And even though another doctor or nine out of ten doctors would say wouldn't do that.

If you are within, your education, training and experience, and there's at least a substantial or significant minority kind of in the same camp as you.

That's definitely supported by standard of care. And that's a, prima facie a defense to any kind of malpractice, prima facie, as a fancy word for kind of you get the benefit of the doubt.

And that defense is kind of valid right now. The other side can attack it and take it apart. So it's not bulletproof. But yeah, that's some Latin that I picked up in in law school.

But you add to your point too, is that, you know, until now and, and in the insurance model, you know, customer service wasn't really top of mind for most doctors, or practitioners, it should be.

Yeah, it ought to be. But, you know, the incentives weren't in place for it to be a huge priority, right? Right, right. Now you're having to go out and sort of market yourself a little bit more or distinguish or differentiate yourself to some degree.

And, you know, like you said, you have to, you know, keep the customers happy. And that doesn't mean sacrificing your your medical principles and doing that, but it's explaining what's going to happen.

You know, telling them this is what we're going to do and this is how we're going to do it. And do you have any questions? And and, you know, really focusing on the service aspect of it because you kind of hinted at it.

But lawsuits happen when people are frustrated, disappointed, their expectations aren't met. And then the emotions start running and then they're like, well, that was shit.

And then they see you over, what, like $3,000 and heads up costing you, like, you know, $50,000 or more, at least. Yeah, yeah. And when I was in my litigation days, you know, our firm would charge for an active case.

It was close to, like, $20,000 per month to the client. You know, we had several attorneys working on it and getting ready and responding to all this stuff.

It's not fun. And it's. And it's not fun. I think you touched on it. It's not fun emotionally either. So there's a lot of emotional time spent and energetic, you know, draining that happens if you're a litigant in a in a lawsuit.

That is, even if you win, you don't win. Everybody loses. Right? The only people that win are the lawyers. Right? So, but even then, like, that's not really great life.

That's why I ran away from it. And, you know, that's a lot of burnout and litigation. But yeah, I think it's, you know, managing expectations, keeping expectations, you know, not through the roof saying, hey, listen, I'm, I'm a doctor.

I'm not a miracle worker. You know, kind of, you know, let everybody know that we're going to work through this together. And you're a partner in your own health care journey and kind of reframing the narrative and their expectation levels around what a doctor is and can be.

And then that will go a long way towards reducing any kind of friction down the road. Oh yeah, I bet. And I assume that most, most lawsuits, really start with just poor communication practices, right?

Absolutely. Doctors, lawyers to, you know, get a lot of lawsuits against them for just not answering emails is the number one reason why lawyers get sued.

By doctors, too. Like just communicating is going to be move all sorts of, gaps in the story.

HIPAA, Informed Consent, and Practice Risk Management

So when there's a gap in the story, the patient thinks you're doing X and you haven't told them otherwise, they're just going to run with that story in their hand like, well, they're they're they're just kind of shoving labs down my throat or shoving supplements to my throat just to make a quick buck.

They don't know that you don't really make any money on labs or, you know, very little money on supplements. So, but if you don't communicate some of that to them or that's really not the best example, but if you're not communicating, you know, the what, the why, the how and how you're supporting them in their journey.

They're going to fill in the story on their own. If you don't. Yeah. And we see this all the time, you know, I subscribe to our Texas Medical Board, newsletter of all the doctors and the fire and stuff like that.

And a lot of them is just kind of really silly, just from a, from a color standpoint, but from a customer service standpoint, it's like, duh. And I'll give you some examples.

There's there's one recently that I saw where, a patient was, saying that his doctor didn't disclose to him that the lab company was supposed to charge their insurance, for the labs are supposed to do, which, I mean, that's that it's almost like a given.

But but these are things that are really needed. Stated. And then and then a lot of doctors are like, well, you know, it should have been quest or lab for whichever lab company, you know, that's the response to be telling them.

But, hey, you know, litigations, litigation. No, no, no one, no one wins in that. And then there's other things where it talks about, okay, well, you know, I had a, I had an annual wellness in my insurance says I'm supposed to cover this whole thing, and it's drives me nuts.

My assurances of this whole thing is supposed to be covered. But then we also talk about my my left foot pain, which the doctor added on a code. And this wasn't didn't necessarily communicate with me.

So most practices actually, they ended up like either writing it off or the end of telling other patients, hey, now there may be things that may not be covered with so the right thing to do.

But this particular one, you know, send the patients collections and then this whole litigation set up again. So these are things that are, that are really, really common out there, that a lot of people are doing.

It's actually the standard of care to not care about all these things. And I feel like, you know, people turn a blind eye to but people are still there's still litigation behind this.

And when emotions run high, you don't want to do the standard of care when it comes to protecting your practice. You want to go well above and beyond, anything.

Because, you know, listen, I, I've been involved in litigation and it's terrible and it's terrible, you know, did I not lose? No, I wasn't at fault. It had nothing to do with my practice.

Has to do with other things that surround the business of practicing medicine. But, you know, a lot of this stuff is frivolous, and you can't really deal with it unless you have some sort of protection.

You know, that's set up. And so I that's why I think that I think practitioners really need like call quality, like legal services. But how how do I know what's a quality like legal service versus someone else.

Like is there like a gauge or a Google review or something like that? Yeah. Good question. I mean it's it's almost like how do you find a good doctor.

Right. There's not that many review services out there that are trustworthy. How do you find a good auto mechanic where you ask your friends and your neighbors and, you know, hopefully they've had good experiences.

So, I think number one, I always say the best marketing is just being a great provider, getting great clinical results because people are going to be amazed and tell their friends.

And so that'll be the best marketing you could ever do. And you want someone that that kind of understands both the, the black and white law, the letter of the law.

And what we've been talking about too, is kind of all right. Well, just overcommunicate in in your example about the labs, like, just say to the patient, hey, take this lab over to quest.

They're going to handle the billing directly so that billing is between quest and, your insurance, it may be covered. It may not be. And I don't have anything to do with that decision making process.

Yeah. And then, you know, also just working with the patient to on that on that point, you know, I'll go back to how to find a good lawyer, but, working with them too and say, you know, if this lab is too expensive for you, we have

negotiated cash prices.

And, you know, see if this if your insurance won't cover it, try this. Or you know what? You know, that's that's kind of a specialty lab. And based on my experience, I can pretty much tell what the results can be.

And let's kind of start that process. But it'll be a trial and error process and, you know, work within your budget, particularly for cash based practices.

But how to find a good attorney. Yeah. Is this kind of word of mouth? And so that's the best one. And then, you know, testimonials are great. You know, if you use testimonials at your practice, you know, that's a great way to kind of provide social proof.

But I think, in even a third party word of mouth is better. Right? So most people that find me find me from former clients that kind of I the first question on my new patient, new customer, questionnaire is how did you find us?

99% of the time, it's some sort of Facebook group or social media or a colleague. And so I think that is how you find somebody good. Or you just, you know, I see it every day.

I'm in some of these practitioner groups from my former life with even me. And it's like, hey, does anybody know how good so-and-so or how are you using this EMR?

So you kind of just go to the group and ask them, then you see if they will do a free discovery call, you know, and see if they that they're going to fit your situation.

And to the extent you know what to ask, ask them pointed questions about your situation. And then sometimes it's a feeling situation too. Are they going to communicate well with you, particularly around billing?

You brought up two examples on billing that led to lawsuits from from patients. Yeah. And I hear over and over again that, you know, I paid a $5,000 retainer, and then I got a bill 18 months later for another 12, $13,000.

And they didn't say anything. Right. So, ask them, you know, what are your billing policies? You're the customer in this situation. Functionally, you know, it's very transparent.

And, you know, I kind of lay it out. It's all on the website. And if you're ask me, I'll be able to tell you what the prices are and that's it. And I don't dip into after retainer stuff.

It's it's pretty clear and so, you know, asking about their billing policies to the when you find them, and then asking colleagues about their experience.

And if you're talking to a doctor, just say, have you ever done this before or have you handled a situation like mine before then? That's not always the best question, because sometimes it be like, oh yeah, absolutely right.

But, you know, you you can gauge the person's character or their trustworthiness based on how they answer certain questions. If they say, yeah, we've done that hundreds of times.

Okay, great. But if someone says, you know, I haven't done it exactly for that particular state in your particular situation, but I have helped lots of other similar cases where, you know, it's your same license level and it's in several states around you, and we can dig into it and figure it out.

And that's an honest answer. And, and that's someone that you can maybe trust. And so do I have a playbook for that? No. I kind of word of mouth, asking questions and kind of getting a feel for it.

And I'm looking, you know, you have a responsibility to, as a consumer to, ask questions and interview us just as much as we're we're interviewing you.

Absolutely. Well, Scott, listen, you know, I have like, 34 other questions, but I'm really not going to ask this. Good to be here for, like, eight hours.

But this has been fantastic. Very revealing. It's really, really make us go back into our systems and see what we're, What we have current documented process.

And and honestly, I hadn't thought about the coronavirus situation, going on right now and how it pertains the way we practice medicine, because we, you know, we switch from 5% telemedicine to 86% telemedicine in two weeks.

That's how quick we did it. And we actually had to, close down our work in two over two of our three program orders, so that we can pivot and change and survive.

And now we're thriving, which is good. But, but a lot of our policy procedures really were surrounding some. Telemedicine is mostly in-person. Now. We're going to have to take a look back and see to see exactly what wore on those things. So thank you very much.

So, so guys, with the link, there's a link in the with the description of of Scott's website and yeah, go ahead and explore it. And I actually did this a few years ago.

There's even more stuff on it now because I just looked right before we hopped on this. It's a lot more robust. So thanks for being on. Thanks for imparting all your knowledge.

I mean, this is such a not just an important discussion, but a very much needed discussion. And and we'll hope to we hope to really, like, save some people from litigations and lawsuits just by listening to this.

So thank you very much. Yeah, I hope everybody got a lot out of it. And if they had questions, just reach out to me, a function, a lawyer or just kind of follow me on YouTube or my social channels and, and you'll get a lot of valuable information that way, too.

As well. Awesome. Thank you so much. Thank you.