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PIVOTING AFTER DISABILITY, MEDICAL-LEGAL WORK & MORE WITH SPECIAL GUEST, DR. JAY FOLEY (PART 2)

David Mandell:

After your injury, once you got the patients taken care of, you got yourself on the right path, and you could step back maybe after a month or two, and say, "Okay, now what?" And where did that take you from a career point of view?

Jay Foley:

At first, I thought it was going to be clinical practice, treating patients, it's what I was trained for. Through my career, I always had an interest in osteoporosis, and I was going to set up a secondary fracture prevention clinic at my hospital. It just didn't work out. I got interested in osteoporosis, and I think more orthopedists should take an active role in the fragility care of patients, instead of just fixing these fractures, get them into the right direction. Primary care sometimes is not the right direction for bone health, there's specialty clinics out there.

So, I learned a lot, got a lot of CMA, it just didn't work out. And just quickly, why I got interested in it was, on Cape Cod, I'd be off Monday through Thursday, and I take Friday, Saturday, Sunday, three out of four weeks. There were days where there would be eight or nine hip fractures per day on the Cape back then, and this was before trochanteric nailing, before there were medial displacement osteotomies. These procedures, these patients didn't do well, because there was no procedure to help them with their intertrochanteric fractures. But the amount of fractures were just overwhelming on the Cape, and that's where I got interested in it.

And really, I think it's a completely different talk, I'd learned a lot more, I treat my patients completely differently from what I learned. But anyways, that didn't work out, and I... That's just one active part of what was going on. I knew that I had always been a California qualified medical evaluator, those are doctors that do wrap up exams for work comp. So I kind of activated working with a company at that point, becoming more active. I still do work comp cases for QME every other month, I'll say

about 10 or 15 examinees. They're very straightforward, very cookie-cutter. The AMA Fifth Edition, once you get used to doing ratings, they're not that difficult, and the companies I chose do have excellent consultants when it comes to rereading your reports and such.

The natural course was also to kind of look into medical-legal as part of some clinical practice. I knew I didn't want to see patients all day long, or five days a week, and I was looking at other options. I started looking into the medical-legal option, I had friends who were doing some across the country, and it didn't seem difficult. Basically, I educated myself through a company called SEAK, S-E-A-K. I think you know them, David.

David Mandell:

Yeah, yeah. I spoke at one of their conferences back in the day.

Jay Foley:

Yeah. And they do a nice job, I took two courses, an expert witness course, and an IME course. They really helped you realize that you can really do this independently, without a company you work for, profitably, and at your own pace. So I started doing a little bit of that, and then COVID hit, which basically shut down all of the law practices and all of the courts. So just as I was starting to get some cases going, everything stopped, and that kind of gave me time to reassess everything, and I kind of looked, and realized that the medical-legal was going to balloon very quickly if I put the effort in. And so it was kind of a waiting game through COVID to see what would happen.

David Mandell:

And since we've come out of that, is that coming to effect? Has it been a large demand now?

Jay Foley:

Oh yeah, without a doubt. And to clarify, expert witnesses, many different aspects, they're basically asking for your opinion. You can work plaintiff, you can work

defendant, you can work malpractice cases. I never chose to work malpractice cases, I found that working how I work with a small group of lawyers, a number of bigger practices in Nevada area, they get your name very quickly, and identify if you do a nice job, they just keep feeding you cases. There's also brokers out there that will feed you cases. You've got to be careful whether they affect some of your fee schedule or not. But I did find a broker in Nevada and Southern Nevada that also has a number of cases ongoing that I'm offered, to the point where it gets really busy really quickly if you're not careful.

David Mandell:

That's a good problem to have. So I want to pause for a second and point out a couple of things. One is, as you made this transition, sounds like you had a clinical entrepreneurial idea about the osteoporosis treatment, and it didn't work out. We don't have time to drill into that, that's probably for another conversation, but I want people to realize that you tried something, it didn't work out. Welcome to entrepreneurship. I mean, that is when you try things... No one bats a thousand, but you stuck with some ideas, in addition to continuing... I just want to make the point, you do see patients clinically, just not doing surgery, so you kept that going, which you were allowed to do under your disability policy, and still collect, is that right?

Jay Foley:

That's correct. Yeah. Because it was the-

David Mandell:

Your own occupation policy-

Jay Foley:

... own occupation policy, once the claim was accepted, I was working two and a half days in the office. I currently work one day in the office, and work in the home office the other time. So I still see patients clinically, but it's down to one day.

David Mandell:

Yeah. So, I just want to point out, to folks watching or listening, that because he had the right type of disability policy, he didn't have to give up the practice of medicine, he just could do the consults and not do the surgeries, and still collect on that disability, which by the way pays out income tax-free. So that's the key in choosing the right type policy, and there's 20 different elements of the policy that are going into it. You want to be with a good agent to help you decide the elimination period, and different riders, and all this kind of stuff that's beyond my expertise. So that was one thing I wanted to point out. The other thing was... you had this interest in... Go ahead, if you have... Jay, go ahead.

Jay Foley:

Yeah. A couple of things about the disability policies, interestingly, I had this personal disability policy all along, and it was getting really expensive. I mean, when you get to be 58, it's not inexpensive, but I also realized that that policy will... Even if you're disabled, all the way up to about two years before... These policies mostly end at age 65, all that money that you have put into that policy will be paid back, essentially, for two years of disability.

David Mandell:

I see.

Jay Foley:

So, if you are paying, and you're 62 years old, and you still don't know what's going on, and then you get hurt, you'll still get all of your money back, and more, by your monthly payment. It is tax-free, mine does end next year, but it comes in tax-free, which is crazy.

The second thing is, actually, through my malpractice company, I had a group policy too, paid personally. It wasn't big, but it added extra money. So anytime your practice can offer you a group policy, they're usually moderately inexpensive compared to the personal policies, and they'll somewhat follow the personal policies. They're more restrictive in terms of what they'll let you do, and go back to work, and sometimes if

you make too much money, they don't pay you the policy, because it's balanced by how much you're making, whereas the personal policy, doesn't matter, you're just paid. But I had both, and it really helped a lot during that COVID time, where there was really no work for a couple of years overall, and I was getting paid in full from both policies. I'd advise everyone to look into their group policy, from whether it be their hospital, or their practice, above beyond the personal policy. The personal policy is something you have to do yourself.

David Mandell:

Right, right. And we make that point in our books, which is basically, there's two sides of the coin. One is, group policies are okay, but you really shouldn't rely on them generally on their own, because they are smaller, they may not be own occ, they're generally less expensive though. And really, get your own, but if you have the ability to get a group, it usually is cost-efficient, because... The reasons you said. So that's great that you pointed that out.

Now, on the QME and the medical-legal, a couple of things I want to point out too is that you had an interest in this, and maybe had some training before, but you were willing to, it sounds, spend some time, and spend some money to get trained up, whether it's SEAK, or other resources, to take advantage of that opportunity, and to kind of jump in, meaning... I think one of the things you and I've talked about, and you made the point already, and know you will as you conclude, is that if people want to get into this, they have to have... I'm not saying confidence, but the sort of faith that they can do it. They can get trained out, they can be an expert.

Because I think for some physicians, just the legal world, or the medical review world, it's kind of scary, it's like, "Do I really know what I'm doing?" And, "Can I really do this on my own, out of my office? I'm used to being part of a big group." And it's a whole different work environment than a lot of physicians, and there's kind of a natural aversion to anything legal and lawyers. So tell us a little bit about that, if you had to overcome that, or other docs who might be thinking, "I don't know if I really would want to do either of these things." Your experience in overcoming that and thriving.

Jay Foley:

Yeah. It's easier than you think. Basically, you're using your training, your expertise through your practice years, and really, the education, training, and experience that you have is way more than you think, and that's all these insurance companies and lawyers are asking, is, "What does your education, training, experience tell you about what you're reading in this chart? And what these injuries are, and what the treatments are appropriate for, and what the futures in terms of, is it going to need future medical treatment to treat whatever injury you have seen?" So, this is nothing then you don't do every day in your own practice. You're always calculating these things about, "If a patient has this injury, what's their risk? If I don't fix it right, what's their risk of progression?" So, they're asking opinions on all this stuff that you've already done.

I was fortunate to have a broad spectrum practice through my career, so I can give an opinion on almost anything in ortho, including back, because I've seen back patients, and followed them, and followed them after their surgeries. So, it was a lot easier than you think. It doesn't take much at home. It takes a good computer. The ability to use word. The ability to use Dragon, and I'd recommend Dragon Medical One, it's much better than any-

David Mandell:

That's a dictation software, correct?

Jay Foley:

Yeah, that's a dictation software. You can use a transcriptionist, but it's not always that effective, sometimes moving things around in your report makes it a lot easier when you do it. You want a stand-up desk, I mean, we're kinetic people. I look at the work I do as surgeries, to a certain extent. I'll come in and do two hours, then I take a break, and I walk the dog. I can't do seven hours all at once. Most of my days are half days. Most of them are locked down 45 minutes to two-hour timelines, much like a surgery. I kind of cone in, and try and minimize interruptions. Just to let you know, it's a lot easier than you think, and it'll pick up a lot quicker than you think, and you'll learn quickly. And as long as you, what's called stay in your sandbox, meaning just a

pint on ortho, or what you have seen, or what you know about. And I back up almost all my opinions with references, it becomes much more comforting. You're not that stressed dealing with lawyers, it's a different way of dealing with lawyers.

David Mandell:

Yeah, yeah, that's good. And I like the fact... Obviously, you're in tune to your kinetic background, that's where... You went into surgery, you're not someone who could sit at a desk all day, more like me, but that you've incorporated that work pace, or environment even. It's very interesting you said, "I do it in 45 or two hours, like I was in surgery. Super focused, then I get up and walk around. Instead of walking around the hospital, and going to the doctors, I'm walking my dog." But from the body point of view, it knows I'm doing something very focused, and then I have some relaxing time, and then I can go back to be focused.

And that probably makes the transition easier than going from one extreme to the other. And the stand-up desk, my partner, Jason, he uses a stand-up desk, I think really more for injury prevention, or keeping his back feeling good, but that's certainly... Ergonomics and all those things come into play. So as we get to wrap up, give me some kind of high level for the folks who may be thinking about this, pros and cons of medical-legal and the case review. Just pros, things you like about it. Cons, things either you don't like, or that people should be aware they need to deal with effectively.

Jay Foley:

The pros are the flexibility mostly. You can do this from home. The overhead's really low. Your computer, my wife does my billing and collecting. You're flexible around your family calendar. You can do this almost anywhere, so I've done it in New England on vacation. It's about the flexibility, and really, it's more about educating lawyers and other people looking at these reports on what is a realistic injury from this accident, and what is the realistic treatment in the futures for it. It's pretty straightforward stuff, stuff you've calculated already. The plaintiff lawyer in your face is always a worry, but it's not a reality. I have done-

David Mandell:

An attorney grilling you in a deposition or something like that, is that the worry?

Jay Foley:

Incredibly minimal in most of these cases. They're mostly settled and go away. In all these years, and probably be pick up, but I've only had two or three depositions for these cases. Most of them just are settled. You hope that your opinion makes a difference in the settlement, but you sometimes never know. So I always follow up with the lawyers at the end of a case, saying, "Is there anything we could have done differently for my growth?" So I try and grow as I'm doing this, and I have all these kind of Word program shortcuts that I've created that are pretty easy. You opine on an MRI what a tear is, they don't describe what a tear is, meaning, it could be a degenerative tear versus an acute tear. Most of your opinions, you've already done before hundreds of times in your career. So those are the pros about it.

The cons, it's a lonely job. You're in the office yourself. That free time is with your dogs, not with the nurses, or other people in the hospital. There's not much flow around you. You've got to be careful with the calendar, you could easily overload your schedule and your commitments. I have a handwritten calendar, I don't like electronic calendars. I just have this handwritten calendar that gives me all the dates that my reports are due, and I kind of keep them spread out. There's going to be disappointment with the medical care that you see in these charts. This is care for medical-legal patients, it's often not in their best interests. You're going to be looking at chiropractors and orthopedic surgeons that are treating these patients on a different way that you think they should be treated, and some of those disappointments, you've got to hold back on yourself to certain things.

And the final thing is, I've always looked at ortho as what I call the three-minute rule. I was taught in med school when I was going into ortho by one of their professors in Cincinnati that in ortho, if you don't know what's going on within three minutes of talking to the patient, doing your exam, and looking at your imaging, it's not an orthopedic problem. We know exactly what our problems are straight away with what we see, with the history of the physical and the imaging. And a lot of these

cases are not that way. A lot of them are chronic pain, secondary gain, and you've got to be aware of that.

Chronic pain's a big factor in a lot of these patients. Secondary gain is concerning, but none of these cases fit into the three-minute rule. You decide, your three-minute rule, "What really am I looking at here?" You know what the orthopedic problem is, but they're more complex, and they take more explaining of why these aren't truly orthopedic injuries, and that they might be myofascial, or strain injuries that are in someone with chronic pain that's getting worse over time. So there's a lot of time that you do put in there that's above and beyond the ortho thought process that we're used to.

David Mandell:

Got it. Yeah, that's interesting. So, as we wrap up, Jay, last thought, just big picture, with your experience, both having to switch gears at 58, but also finding this next stage very successful in the things that you're doing. If talking to yourself 25 years ago, or you're talking... Some of the people watching this are young and starting out, the first phase of their career, maybe even in training, high level advice, what do you tell them?

Jay Foley:

Well, first of all, the disability policy, your risk is there, no matter what. And I think I mentioned to you before, there's a lot of orthopedists with cumulative trauma injuries too, that can activate a disability policy for bad CMC arthritis, or bad spine, or bad hips, or knee replacements, that take you out of the OR from your usual practice that all qualify for your disability policy. So pay it all the way up until... You can think about dropping these policies, but I'm really happy I didn't. And just be aware that the risk is there, and the policies can quite easily pay for themselves over time. Look in the long-term not the short-term.

And in terms of the medical-legal stuff, it's for some people and not for other people, I know that. It's still you working personally, not passive income, it's active work for income. My kids are now just starting high school, I'm going to be around the house and helping with the family for a number of years. If you're off in retirement, this

might not be right for you. And the final thing that I want to kind of ring a bell on is that I've been very, very frustrated with the AAOS, in terms of how much they educate senior doctors in terms of what other professions might be out there at the end of their career. They really stay away from this stuff, and they really could do a better job helping senior doctors, or doctors that might be disabled to recreate their life, and what their expertise really has been, and what they've learned, and their training, and experience, and being able to use this above and beyond volunteering for the AAOS.

David Mandell:

Yeah. Yeah, that is a great point. I want to end on that, Jay. Thank you so much for being here. This isn't just with orthopedics, I guess that's what my point was going to be. We've heard this from other docs, I think the end of season... Last season, season four, we had an oral surgeon, spent a lot of time in the military then in academics, and he said, "I retired, and now what?" And it took him a while to kind of figure out a business, actually, of helping, and using his expertise to go in and help practices with emergencies. That was one thing he had been trained on, and what happens for dentists if there's emergency, and he has a consulting firm that he can help folks on.

But he didn't get any direction on that, that was all kind of out of himself, and it wasn't easy to come up with that. So the idea that, I think medical societies, that maybe firms like us, bringing the awareness can help docs who get to a certain point, either voluntarily, or could have circumstances that they need to do a shift, that there are opportunities out there, and you're living proof of that. So Jay, thank you so much for being on. I really appreciate it.

Jay Foley:

Yeah, anytime. Thanks. Great seeing you.

David Mandell:

And to all the viewers and listeners, I'm always reminded to say, if you like what you hear or watch, please subscribe. Give us a five-star rating if you are so inclined. Tell

your friends and colleagues about us, and in another two weeks, we'll have another episode. Thanks for tuning in.