



Episode #20 Expert Witness, IMEs, and Life Care Plans with Dr. David Oliveri

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DO: “If you are the type of person that doesn't like conflict, avoids it at all costs, doesn't like people questioning your judgment, this type of work may be difficult.”

HF: Welcome to The Doctor's Crossing Carpe Diem podcast. If you're questioning your career in medicine, you've come to the right place. I'm Heather Fork, a former dermatologist and founder of The Doctor's Crossing. As a master certified coach, I've helped hundreds of physicians find greater happiness in their career, whether in medicine, a nonclinical job, or something else. I started this podcast to help you discover the career path that's best for you and give you some resources and encouragement to make it happen. You don't need to get stuck at the white coat crossroads. So pull up a chair, my friend, and let's carpe that diem.

Hello, hello and welcome back to the Doctors Crossing Carpe Diem Podcast. You're listening to episode number 20. Today, we have a medical legal trifecta for you. We're going to be talking about being an expert witness, doing IMEs or Independent Medical Exams, and being a life care planner. You may be wondering how all of these things fit together, and if you're suited for one or more of them. Well, you're in luck today guys, because my wonderful guest today does all three of them and it's here to give you the lowdown.

In a minute, I'll be welcoming onto the podcast my former client, Dr. David Oliveri who is a successful board-certified physical medicine and rehabilitation physician. Dr. Oliveri

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has a highly successful practice where he performs IMEs, the Independent Medical Exams, serves as an expert witness and creates life care plans.

In addition, he also has certifications in IMEs and life care planning. I thought Dr. Oliveri would be an excellent guest to give you an insider's perspective on the type of personality that is a good fit for these things, as well as speak to which specialties are a good match. We'll also be diving into the details such as how to start exploring these areas and what's required to get started. Without further ado, I am honored to welcome Dr. David Oliveri to the podcast. David, how are you?

DO: Doing great, Heather. I'm honored to be here. Thank you.

HF: Oh my God. This is such a treat. And I just got to see you for the first time on Zoom after working with you for over a period of years. So, I feel like I've known you and I'm really appreciative of you for taking the time to help us out today.

DO: For sure. My pleasure.

HF: Would you like to start and tell us about what was going on when you first reached out to me?

DO: I think it was in 2014. So, I have been in practice in Las Vegas since 1993. I was very busy with medical legal work. I was still doing quite a bit of clinical work as well, but I was getting totally overwhelmed with trying to control what was happening with my medical legal work. I think when I first reached out to you, I had something like 20 cases that I had agreed to evaluate where I had seen the plaintiff and I hadn't finished the report because I was just overwhelmed, a little bit burned out and not very efficient. And I had this backlog of work that was just driving me crazy. I did not think that I could sustain that type of schedule and be happy. I just couldn't figure out a way out of it. And that's why I contacted you.



HF: I remember. And we called it med-legal mountain because it was a mountain of work. I felt stressed just hearing about it.

DO: Right. It was all paper charts and boxes of records. And it was piled up in my office like a mountain.

HF: One of your problems was, it was a good problem to have, but you were so sought after by attorneys and so great at what you did that you couldn't keep up with the demand.

DO: I think that's part of it. And I also had a real hard time saying "no" to people.

HF: The boundary thing.

DO: Yes.

HF: Do you want to talk a little bit about how you actually got into doing this work from being trained in physical medicine and rehabilitation?

DO: I did my residency at Stanford and we had a community physician that would come and give lectures to our group of residents periodically. And he did a lot of IME work or medical legal work in workers' compensation. So, he would periodically come to talk to the residents. He'd give examples of his reports and the types of cases he'd work on. He talked about the methodology and the categories that he would address. And I found it to be very intriguing for whatever reason. I think partly my personality, but I liked him as a person and I thought this is something I want to pursue.

So, I came to Las Vegas and practiced at a busy practice. I was a medical director of a rehab hospital. I had an inpatient load of 20 some patients. I saw patients in the office from 09:00 to 04:00 Monday through Friday. And then I started slowly getting into doing



some worker's comp IMEs. They would contact, they would ask specific questions whether the person needed more treatment, whether they could go to work.

And that was sort of my introduction to the medical legal work. From there evolved into, I think it was State Farm insurance reaching out to me one time and saying, "We have a case we'd like you to review the records and give us your opinions about what's going on". From there, I was introduced to a few plaintiff attorneys and they would refer me cases. And then fast forward to this point in time, I got myself off all insurance company lists about 10 years ago, not on Medicare or Medicaid. And about 70% of my time is spent doing medical legal work.

HF: What was it that interested you that made this take hold and continue to be something that you really enjoy doing?

DO: For me, it was the interest in solving problems and solving problems that were a little bit different than what we solve in medicine. So, the idea of seeing somebody who's claiming that they have a problem, but you don't necessarily know that for sure. So, the process of delving into whether the patient is telling the complete truth, whether there are other factors involved in how they're perceiving their problems or portraying them. And that process definitely interested me. And also, I would say that working with non-physicians was intriguing to a certain degree. So, doing IMEs or medical legal work, you're interacting with lawyers, you're interacting with claims adjusters. You have people sort of looking over your shoulder, but they're looking to you for guidance because you're the physician, you're the person that knows how to deal with these issues. So, I think all of those things got me interested in doing this work.

HF: Yeah. I love how it's worked out and you've changed it over time to make it work for you and not kind of controlling your life. Would you like to, at this point, talk about these three different areas we're going to be diving in? I think a lot of physicians are familiar

with expert witnesses, but let's still go back and we'll talk about what is an IME, then a little bit about the expert witnessing and also what is a life care plan.

DO: Sure. If I could add one more thing.

HF: Yeah, please.

DO: Looking back, I think that I felt like I was getting squeezed by these insurance companies more and more every year. I felt like the reimbursements were going in the wrong direction, the requirements to admit patients to the hospital and treat them were getting more difficult. So, I was just getting more and more frustrated with that part of my practice. And it left an opening for the medical legal work to be more important to me.

HF: I think what you just said is going to resonate with so many physicians and I bet their ears are perking up to say, "Hmm, maybe I don't need to leave medicine. I can still use my skills in some different ways" and continue to be what you just described before. It was being a detective and investigating things in your medical knowledge, which I think it's a natural quality that you use as physicians. Natural skill.

DO: Yes. For sure.

HF: All right. So, teach us about these things, David.

DO: Okay. So, let's talk about Independent Medical Examinations or evaluations in IME. So, in very simple terms, this is a requested evaluation by some entity. It's some third party who is asking you to evaluate a particular individual and that third-party could be a worker's comp adjuster. It could be an individual that works for a third-party administrator under workers' comp. It could be a defense attorney for an insurance company. It could be a plaintiff attorney that represents an injured individual.

Usually, at least in the beginning, they will outline what they're requesting of you. So, it could be as simple as a workers' comp referral, where they want to know does this patient need to have surgery on their spine. Or they want to know, can this patient return to some type of work, light physical demand, medium physical demand in their own occupation. Or it could be as extensive as a complicated personal injury case where you're asked to review records, bills, evaluate the plaintiff, come up with diagnoses that are related to the incident, decide whether the treatment was reasonable, decide whether the billing was appropriate for what the providers did, determine work status, and also determine if there are future medical needs, which ties into the life care plan issue.

HF: When you were talking about this, it just made me think that when a physician is disabled, maybe they're a surgeon and they develop some type of nerve injury or can't use their hands or something that they will likely get an IME in order to get the disability plan kicked in.

DO: Correct. Yes.

HF: So, it's a very important exam and it's important to have it be accurate and fair.

DO: It is an important exam. But it can be a little bit of a shady business because as you can imagine, referral sources tend to gravitate toward physicians that they think are going to help support their case. Not always, but it seems to me over my 20 plus years of doing this after the physician does this type of work for a while, people in the community, sort of figure out your philosophy, figure out if you're a person that believes everything a patient says, or whether you're the type of physician that is very skeptical about individuals that are injured. So, it is important, but there are a lot of hidden agendas that sometimes are created.



HF: I'm glad that you brought this up David, because it's one of the things we wanted to talk about, which is what's a good personality type for this work. You happen to be a type one on the Enneagram, which is called the reformer or the perfectionist, and they're very values driven. They will do what's right even if there's external pressure for them to do otherwise. Can you talk a little bit about a personality type fit for doing independent medical exams?

DO: What you just mentioned is something that I feel every week that I do this type of work, but it's still something that interests me. So, for example, everybody has an agenda. The defense attorney, their job, they're an advocate for their client. Their client is a business or an insurance company or something like that. And their job is to minimize the extent of injury or damage that their client might be exposed to. The plaintiff attorney is the advocate for their clients. Their client only makes money when they get a good settlement and they are motivated to maximize the injury or the extent of the injury of the patient. That said, if you as the physician evaluator is always polarizing, in your opinion, you're always siding with one side or the other, it impacts your reputation in the community. As I mentioned before, people tend to have a pretty good idea about how you're going to approach a case.

But I see it as an interesting part of the job because I don't mind being questioned about how I do things. I don't mind having uncomfortable conversations on occasion if the referral source doesn't understand why I'm saying what I'm saying. And at the end of the day, the most important thing to me is my reputation and my ability to continue to do this work as long as I want. I don't want to be the type of doc that does medical legal work that gives such predictable opinions, that nobody values your opinion and they stop hiring you.

HF: And what you're really speaking to is integrity. Bringing that sense of integrity into your work and fighting against the currents that are coming from either side and maintaining what you see as the truth of this case.



DO: Sure. And I will tell you that I've had many conversations where an attorney, I'll give you an example, a defense attorney will call me, and I'll get on the phone. And they'll say something to the effect of, we have this case, some injury and the adjuster for the insurance company wants to hire Dr. X. And I told them, we all know what Dr. X is going to say. I would prefer that we have Dr. Oliveri evaluate this case instead, so that we get a really clear idea of what's going on.

HF: That's such a lovely compliment to you. And it may be alleviating some fears that physicians have that they're just going to have to be a "yes" person or that they're going to have to give in to pressures for saying things that they're not comfortable with.

DO: Right. You do not have to do that.

HF: Where would you like to go from here? Do you want to now go to an expert witness and we'll come back later to talk about steps physicians could take to get started with the IMEs?

DO: Yeah. So, let's talk about the umbrella of expert witness work.

HF: All right. Take us there, David.

DO: Okay. So, an expert witness is an actual designation to the court. So, when you're an expert witness an attorney on one side or the other actually designates you as the medical expert for a particular case. This means that you are going to be asked or they're going to produce a report from you that outlines your opinions. It means not uncommonly that you will be required to give a deposition if the other side of the case is interested. It also means that on occasion you might testify in a proceeding, whether it's an arbitration, which is sort of a private trial, or actually in a court case in front of a jury or a judge.



HF: That was a very clear definition, David. And I can tell why this work suits you well is because you're very articulate and you're good at explaining things clearly. And I'm sure the jury appreciates that. Next, let's talk about what a life care plan is.

DO: Life care planning is part of what is oftentimes addressed when you do a medical evaluation, an IME, or provide expert testimony. In simple terms, it is a written document that describes the medical care needed for an injured plaintiff ongoing. And this could be a simple type of life care plan, if you have a non-catastrophic injury, maybe a patient with a lower back injury and they might need some medication and physician visits and physical therapy. That might be the extent of the life care plan. Or it could be a very extensive document with an individual who is catastrophically injured with a spinal cord injury or traumatic brain injury. The components in those cases may include multiple physician visits ongoing, physical therapy, home care, home nursing, durable medical equipment, supplies. It could be architectural renovations. It could be mobility aids, wheelchairs. It could be an adapted van for them to have community access.

HF: These could be very, very extensive.

DO: They can be, but the reality is the catastrophically injured plaintiffs aren't very many. So, out of, if I do a hundred life care plans, maybe only 5 or 10 of those will be these extensive, catastrophically injured patients with huge life care plans.

HF: Well, I'm glad for that because no one wants to be there needing that kind of life care plan.

DO: Right.

HF: If a physician is listening to this and these three different things, what are some ways that he or she might consider, whether they're a good fit, whether it's their personality and/or their specialty?

DO: I can only go by my experience on this. Most of the cases that involve a request for one of these medical legal items involve some sort of physical injury. So, it's not common, you can imagine for an ophthalmologist to be requested to do an evaluation, unless it's an ocular injury. The specialties that are most or the best fit for this would be orthopedics, physical medicine and rehab, neurosurgery, pain management, radiology neurology. And sometimes there can be multiple physician specialties hired by the same side. It's common in my world where there is a serious injury or accident, where there are high stakes, where somebody is going to pay millions of dollars. And each side of the case will hire one physician in every one of those specialties that I just mentioned. So I could be potentially reviewing and providing rebuttal to five physicians or more depending on the case.

HF: That's quite a party of physician experts. I have also heard that there's a need for psychiatry. And that wouldn't come in necessarily to all the physical things that you see, but more in the same mental health, depression, and those kinds of issues.

DO: Yes. And actually, I should have included psychiatry because I see psychiatry being utilized when there is a traumatic brain injury, especially when it's a mild traumatic brain injury. And there are questions that exist as to whether the presentation of the patient, whether it's memory problems, dizziness, behavioral changes, whether those are related to an organic injury to the brain, or if they're related to some psychiatric component, anxiety, depression.

So, psychiatry can be very important in those types of cases, as well as the ancillary specialties of psychology and neuropsychology. There is a whole other world of needing vocational rehabilitation specialists. For example, if a doctor gives an opinion that the

person can't work in their prior job and they give some restrictions, the vocational person can interview and evaluate that patient or the plaintiff and come up with alternatives. And then the two sides of the case can argue as to whether the new occupation is going to result in the same amount of money to that person or a lesser amount, whether it adds value to the case.

HF: Would you say that if a physician is in one of the specialties that's not in high demand that he or she should just write off this work?

DO: No, I don't think so because there's still a need. For example, I have a colleague who is a vascular surgeon who has a certification in critical care medicine. So, sometimes he will be asked to evaluate medical malpractice cases. Sometimes he will be asked to evaluate general surgery related issues. I had one case where an individual inadvertently swallowed a toothpick. It perforated his colon and created a liver abscess. I followed the case but I relied heavily on this vascular surgeon, colleague of mine, to educate me about the different types of injuries.

So, depending on the problem of the plaintiff, there could be a need for a burn surgeon, a vascular surgeon, general surgeon, internal medicine, ophthalmology, dermatology. I think I mentioned to you the other day, I had a case where there was some sort of explosion, the treating dermatologist gave testimony that the resultant psoriasis or some skin problem was an indirect result of the blast injury. So, the amount of work is probably less in terms of frequency, but you could still be an important expert to a case.

HF: That's lovely. And I love that encouragement because they may not be looking to do this work to replace a significant portion of their income, but they may want to do something different to learn something new and as well have some side money. Could you inform us about ersonality fit? Who may be a good fit, and then who may not be?



DO: I think in general, if you are the type of person that doesn't like conflict, avoids it at all costs, doesn't like people questioning your judgment, this type of work may be difficult. But that doesn't mean that you still can't find your niche. And then I think in general, the philosophy issue is an important part of this. I suppose you could be a physician that just says whatever you think the referral source wants to hear.

But I think what happens more commonly is that, you just in general, as a physician, have a certain philosophy about treating patients that are injured. There are physicians that think that everything the patient says to you is true. How it happened, how bad it is, how it's affecting their life. And you don't question or doubt that. If you're that type of physician, the insurance defense attorney probably is going to figure that out pretty fast and probably won't be as interested in your opinion about the plaintiff.

On the other side, you might be the type of physician that thinks that people aren't necessarily truthful all the time. That they exaggerate, that they have secondary gain, that there is overutilization of medical care. And if you're that type of person, I will tell you that the defense attorney probably will migrate toward you and a plaintiff attorney probably won't. I like to think that I'm in the middle of those personality types in terms of philosophy.

I will also tell you I don't like being questioned. I don't like my judgment being second guessed, but I figured out a way to handle that stress and be more of an educator. So, if I sense that somebody is trying to question how I'm doing something, if I explain how I do it and why I do it, then it helps to decrease the conflict.

HF: That's a really good reframe because as doctors, we're not used to people questioning us. They come to us so we can tell them what we think.

DO: Right.

HF: I know we're getting a little close on time here, and we definitely want to include some steps that physicians can take to further explore these three areas. What would you suggest?

DO: For me, workers' compensation was a great intro to this type of work. And you don't necessarily have to have any type of specialized training other than being a board-certified physician in your specialty. The stakes are low. You give your opinion. Depositions, at least in Nevada are almost unheard of in workers' compensation cases. Testimony in a proceeding is almost unheard of in Nevada for workers' compensation. But you do get a taste of what it's like to review records, give an opinion, and maybe have a physician on the opposite side, say that they disagree with you. And then you have to come up with your ultimate. So I do like workers' compensation as the entry point into this type of work.

HF: That's a great recommendation. And where might they find out about doing this kind of work?

DO: When I first started, I made phone calls to the third-party administrator offices in Las Vegas. I made it a point to try and meet some people. It's probably the only time of my career that I did any sort of marketing where I actually went out, I took people to lunch. I introduced myself. And then after about a year or two of that, I haven't done any marketing since that time. That's one way to get the introduction. I think you could do some additional training. There are entities out there that will teach people how to do independent medical evaluations, teach you how to get started in the business. So, there are different resources you could potentially rely on as well.

HF: And I'll link to a couple things in the show notes that you can check out if you're interested. Any suggestions for doing expert witness and life care plans?



DO: The life care planning part for me was a natural extension of the IME or medical expert work. As a physical medicine rehab doc, we are trained to look at the whole picture with the patient. Actually, let me backup. We're trained to have familiarity with other individuals that are involved in the care of that patient. We're typically leading a team of nurses, therapists, vocational people. The training is a nice introduction to being able to make decisions about future medical care.

So, I actually did life care plans for probably 15 years before I took some additional training and actually received a certification doing it. I only did that about five years ago. But the training or life care planning I thought was awesome. Historically it is something that's offered to non-physicians, nurses or vocational rehabilitation counselors. But more and more, I've seen that there are physicians that have become interested in the training and the certification.

HF: And again, I'll have a link to where you can do training for life care planning if anyone's interested. These are all really great suggestions. I think you had a case that you wanted to tell us about that ties in all three of these things, David.

DO: Sure. I looked at my list of testimony and one of the more recent cases, obviously there hasn't been any court testimony since the pandemic, but before the pandemic, I have a case that provides an example of all of these factors. There was a young gentleman in his 20s. He was in Las Vegas at a casino and stayed at the hotel. His version of the events was that he was trying to open the window in his hotel room and the glass broke and his hand went through and it caused severe lacerations and nerve damage.

HF: Ouch, ouch, ouch, painful.

DO: And getting back to the philosophy issue, the insurance defense said that he wasn't trying to open the window. He punched the window.

HF: He didn't do well in the casino or something.

DO: So, there was a huge liability issue, which as a physician, you don't have to get involved in. And I never get involved in liability. So, I was asked by his attorney, by the plaintiff's attorney to evaluate him. I saw him face to face. I examined him. I reviewed all the medical records and the bills. And I came up with my diagnoses that were related. It was pretty obvious what was related because he had lacerations. There was no dispute. I think there was some dispute as far as the extent of the nerve damage and the extent of his ongoing pain and functional problems. I gave opinions about the appropriateness of the care. I analyzed the billing. I gave him permanent work restrictions in my report, limiting his use of that extremity. And I looked at future medical needs.

At the time I first saw him, his care was still active and he was under the care of pain management, but had not completed the care. He eventually was recommended for and underwent a spinal neurostimulator to treat his severe neuropathic pain in the arm. I did the life care plan, which outlined future medical needs of physician visits, some physical therapy, maintenance of the neurostimulator with replacement of the pulse generator and authored that report and submitted it to the attorney.

The opposite side of the case, the attorney for the casino took my deposition, questioned me about my methodology, my conclusions. A lot of times in depositions, they just want to make sure they know what you're going to say in front of a jury and what you're not going to say. If you deviate substantially from your deposition testimony compared to court, then they can use that against you.

The case ended up going to court. I testified for the plaintiff. And then the day after I testified, the two parties actually came to a settlement before the case went to the jury. The jury was excused and both sides agreed to a certain dollar amount.

HF: It's an unfortunate case. You never want someone to have an injury like that. The example tied in all these three different things that you do. And as you were talking about, a physician could do all those three things, but they could also look at doing them independently.

I'd love to end here with a question for you, which is how does it feel that when you were at that point where you thought you may have to leave your career in order to have some semblance of a life, how does it feel to still be doing what you trained to do and helping others?

DO: It feels great. With the work that I did with you, Heather, I realized I really enjoy my specialty in medicine. I really enjoy the medical legal work. I was just frazzled and unable to climb out of this pool that I dug and being able to get control of it. I mean, there are times that I still get frustrated with dealing with people and the nature of the work, but for the most part, I have a great practice. I have a great life. I have flexibility. And it's the things that I didn't have before I got control of this thing.

HF: Well, I really am glad that I got to share this journey with you and watch how you summited the med-legal mountain. And it looks like the view is pretty nice from up there.

DO: It is. I'm very happy.

HF: Yes. Well, congratulations to you. And you're doing a lot of good work to help patients and help them get what they need out of this challenging process and do it with integrity. So, I'm really proud of you.

DO: Thank you. And Heather, thank you so much for the guidance that you gave me. As I mentioned, I was in a tough spot, not being able to figure it out and you guided me through that process and I would not have been able to do it without you.



HF: Oh my gosh. Well, I really appreciate that. I feel like you could have done this on your own, but I'm glad I got to cheer you on and watch you take off and reach new heights. So, thank you for all this great wisdom that you shared on the podcast, and I'm sure it will help some physicians be happier in their careers too. So, thank you. And let's stay in touch.

DO: Thank you, Heather.

HF: All right, guys. That was really, really interesting. And I hope some of you will explore some of these areas. I'll link to some resources on the show notes for this episode at Doctor's Crossing. I'll catch you in the next episode and until then don't forget to carpe that diem. Bye for now.

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Podcast details

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