

# Collecting Disability Insurance Benefits IS NOT LIKE BUYING A DISABILITY POLICY



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Dentists and surgeons have the highest number of claims for long term disability benefits amongst all medical professionals. This fact is not surprising given the requirements of manual dexterity, fine motor skills and the amount of time required to complete most dental procedures. As an attorney who has helped thousands of individuals collect long term disability insurance benefits, I am a strong advocate for

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long term disability insurance. I think every dentist should purchase as much coverage as possible in order to protect their income in the event of a disabling injury or sickness. With the assistance of an experienced insurance sales agent, a dentist can purchase a very good disability insurance policy. But, how easy is the process of collecting disability insurance benefits if a claim must be filed? The simple answer is that if neither a serious injury nor a life threatening disease has been sustained, then a dentist must be prepared for what can be a challenging, frustrating and highly scrutinized disability claims handling process.

## **You Get What You Pay For with Disability Insurance Coverage**

Buying a disability insurance policy is similar to selecting the options when buying a new car. Just like a car, the more options you select, the more you will pay in insurance premiums. In its simplest form, a long term disability insurance policy is a contract. Every disability policy is written differently based upon the options selected at the time the policy was purchased. For purposes of this article I will

make the assumption that a dentist purchased a policy which defines **total disability** as “**the inability to perform the substantial and material duties (or important duties) of your occupation at the time you became disabled.**” This definition of total disability is known as an “own occupation” definition of total disability. A good disability policy will continue the own occupation definition of disability until the policy expires; however there are numerous disability policies that end the own occupation definition after either 24 or 60 months of receiving benefits. A dentist should always pay additional premiums for an own occupation disability policy. Most policies will pay disability benefits until age 65; however there are policies that will pay lifetime depending upon the age at which the claimant becomes disabled.

Most dentists purchase a disability policy with a **residual disability** rider, which usually states “**if you are working and unable to perform one or more of the duties of your occupation and you have at least a 20% loss of monthly income,**” then you will be eligible for a percentage of your monthly disability benefit. For example, if due to injury or sickness your monthly income drops by 50%, then you would be entitled to receive 50% of the monthly benefit amount purchased. If you had purchased a \$12,000 monthly benefit contract, then you would be entitled to a \$6,000 monthly benefit. With a residual disability claim, the amount of the monthly benefit will change based upon the percentage of lost income each month due to disability. A claimant with a residual disability claim would be required to submit monthly financial documentation and monthly production reports to the disability insurance company.

## **“Substantial and Material Duties” is a Challenging Term in Dental Disability Claims**

If a dentist qualifies for total disability benefits, then the amount of money earned each

month by the claimant is usually not relevant in determining the amount of monthly benefits owed. With a true “own occupation” definition of total disability, a dentist should receive their full monthly benefit if they cannot perform their “substantial and material duties.” What are the “substantial and material duties” of a dentist and how does a disability insurance company quantify them? Disability insurance policies do not define “substantial and material duties” as the duties of each individual dentist are always different. As such, disability carriers will commonly challenge a total disability claim following their completion of an occupational duties analysis.

To determine the substantial and material duties of a dentist prior to disability, the following documents may be requested by the disability insurance company:

- Monthly ADA Production Reports for the 12 months prior to date of disability
- Annual ADA Production Reports for the two years prior to date of disability
- Monthly Profit & Loss Statements for the 12 months prior to disability
- Annual Profit & Loss Statements for the two years prior to disability
- Corporate Tax Returns for the five years prior to date of disability
- Personal Tax Returns for the five years prior to date of disability
- A copy of the claimant’s patient appointment calendar for the 6–12 months prior to disability
- Monthly corporate bank statements for the 6–12 months prior to disability
- Payroll records for the 6–12 months prior to disability
- A list of the names and contact information of all employees prior to disability
- A copy of the claimant’s recent application for malpractice insurance

- A copy of the claimant's recent application for state dental license certification

Most claimants will ask us why any of the above information is relevant. The disability insurance companies will not make any assumptions about your dental duties. They do not believe any claimant unless they have documentation to support the claim. The disability company compares the claimant's documented medical restrictions and limitations<sup>1</sup> with the dental duties that the claimant was performing prior to disability.

All of the information listed above is not relevant to a disability claim, but the Production Reports are essential in order to determine pre-disability duties. The Profit and Loss Statements and Tax Returns are used by the disability carrier to verify that you are actually generating income that supports your production reports. The tax returns are also used by the insurance company to determine if a claimant is seeking disability because their business is not doing well and whether they will make more or similar money collecting disability benefits. The appointment calendar is used to verify the hours per day a claimant is at work and the number of patients per day that a dentist was treating. The payroll records and list of all employees are used as another method to verify that the claimant was working pre-disability.

The disability companies also like to speak with co-workers to determine if they noticed or were aware of any medical conditions that prevented the claimant from performing any dental duties. In most cases we find that a dentist does not tell his or her staff about their medical conditions. Lastly, the applications for malpractice insurance or dental licenses are used to see if the claimant answered any questions about whether he or she has a medical condition which would affect their ability to safely perform dentistry. The disability companies are constantly searching for any inconsistent statement, which they can use to impeach the credibility of the claimant. The credibility of the claimant is extremely important because it is not the diagnosis of a medical condition that disables a claimant,

but rather it is the subjective complaints of pain and limitations caused by the medical condition. If a disability carrier thinks a claimant lied about a matter unrelated to their medical condition, then they assume that the claimant is also lying about the severity of their claimed disability. Disability companies will employ numerous other techniques, such as video surveillance, in order to verify the credibility of a claimant.

### Selecting a Date of Disability Should Be Planned if Possible

Dentists never plan to be disabled, but if they need to file a disability claim they must be prepared. A very small percentage of long term disability claims are the result of a serious injury or catastrophic event that forces a dentist to stop working immediately. The majority of disability claims for dentists are caused by chronic illnesses such as neck or back degenerative disc disease, carpal

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tunnel or shoulder problems. Most dentists are able to continue working with a chronic illness until they feel that they can no longer provide a safe or effective level of care for their patients. We often represent dentists who have been working with a chronic illness for several months or years before they file a disability claim. In this scenario, the disability company wants an explanation as to why the dentist was able to continue working but then suddenly stopped working. Approval of disability benefits becomes more difficult if a dentist continues to work with a chronic illness and does not have any reduction in individual production prior to disability. A

claim gets more complicated when a dentist realizes that they are having great difficulty performing their duties, but they have to continue working if they want to have any chance of selling their dental practice. We don't recommend a date of disability that is the same as the date the claimant's practice is sold. A date of disability must be selected by coordinating a claimant's medical records with a six month analysis of the dentist's monthly production reports. Disability policies have anywhere from a 30 day to 180 day elimination period before benefits are payable. There is usually sufficient time beyond the elimination period to submit a disability claim.

A properly documented disability claim with the appropriate medical support will normally result in claim approval. If there are any inconsistencies or insufficient data, a claim decision will either be denied or delayed for months. Filing a long term disability claim is an emotionally difficult experience for most dentists. Additionally, there are usually several hundred thousand or millions of dollars that could potentially be owed to a disabled dentist. Initial approval does not mean you will continuously receive disability benefits; therefore it is important that you continue to diligently maintain your disability claim at all times. Disability insurance companies are in business to make money. If they have a reason to deny a claim, they will do so without hesitation. ■

*About the author: Gregory Michael Dell is a nationally recognized disability insurance attorney and managing partner of the disability income division of Attorneys Dell & Schaefer. The firm's disability income division is comprised of eight attorneys who represent claimants nationwide, throughout all stages (i.e. applications, denials, appeals, litigation, & lump-sum policy buyouts) of a claim for individual or group (ERISA) long-term disability. Mr. Dell and his team of disability lawyers have assisted thousands of long-term disability claimants with their claims against every major disability insurance company. For additional information visit [www.diAttorney.com](http://www.diAttorney.com) or call 888-Say-Dell.*

#### NOTES:

1. Medical restrictions and limitations are provided by a claimant's treating physician. Physician support is essential in order for any claimant to be eligible for disability benefits. It is important that a treating physician understands the occupational duties of the claimant and the definition of disability in the claimant's disability policy. A treating physician must take detailed examination notes and be aware that their medical records will be scrutinized by the disability insurance company.

