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How a disabled doctor-turned-lawyer still collects benefits

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On Halloween eve 2002, Dr. Z, a thoracic surgeon, was the victim of a drunk driver as he returned home following completion of a procedure at his primary hospital. His vehicle was rear-ended and thrust into a light post. Dr. Z survived with minimal injuries, but was diagnosed three weeks later with a large herniated disk at C5-6 to the right side with clear nerve root impingement.

Dr. Z's cervical injuries rendered him incapable of performing the duties of his specialty, which resulted in his partner taking over his responsibilities both in the office and operating room. Cervical surgery performed early the next year did not enable the doctor to return to practice.

Days after receiving Dr. Z's benefit claim application, his insurance company forwarded him their standard form letter expressing their regret over Dr. Z's misfortune. The letter advised Dr. Z of his policy's principal contents and quoted its definition of total disability.

"Total Disability means injury or sickness that restricts your ability to perform the material and substantial duties of your regular occupation to an extent that prevents you from engaging in your regular occupation, and you are under the treatment of a physician. However, after you have received 24 months of benefits due to the same total disability, Total Disability then means injury or sickness that restricts your ability to perform the duties of any *gainful* occupation in which you

might be expected to engage, based on your education, training and experience, to an extent that prevents you from engaging in such occupation, and you are under the care of a physician."

**Keep off the property**

Dr. Z promptly returned his claim form with supporting documents, which was followed up by the insurance carrier's request for a face-to-face interview with

Furthermore, the doctor had a plan. He would collect benefits while pursuing a life-long dream. He applied to and was accepted to a local law school. His plan was to become an attorney, successfully practice his new occupation and, pursuant to the policy terms, give up future disability benefits once he started generating a reasonable income practicing law. Or so he thought.

Dr. Z did exceptionally well in law

**"In the disability income insurance arena, 'no' does not necessarily mean no."**

one of their field examiners. The meeting took place at Dr. Z's residence, not a good idea since a claim examiner should never be an invited guest to see your home and the manner in which you and your family live, something they may attempt to use against you in the future. (Many claims result in video surveillance of you and your activities. Therefore, keep the solitude of your home private.)

Thirty-six days after the check was due, Dr. Z received his first benefit accompanied by claim forms for the following month. The doctor was elated — he might not encounter the myriad of problems faced by his colleagues who had a difficult time collecting their disability benefits.

school. He overcame constant back pain, the lack of decent seating in the library, poor class scheduling and cognitive impairment caused by twice daily pain medications. In fact, between classes he would return to the school parking lot to lay down in his converted van. Yet Dr. Z graduated, passed the bar exam and set up a solo law practice operating out of his home.

Unfortunately, many of the problems that terminated Dr. Z's medical career were impairing his ability to practice law. Once he began accepting clients, he found that while taking meds he could not cognitively deal with complex legal issues. He napped in mid afternoon and could not wait in a courtroom for anything more

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## Lessons in disability insurance

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than a short motion hearing. Embarrassingly, Dr. Z earned and collected only four thousand dollars in his first nine months of practice, and the future appeared no more promising. But the worst was yet to come.

#### Interpretative dance

The insurance company who had paid Dr. Z from the accident through the first nine months of his law practice was now terminating future benefits. The correspondence reminded Dr. Z that he did not have a true “own occupation” disability policy and that his policy provided for a disability definition change if after 24 months of receiving total disability benefits, he was engaged in any “gainful” employment.

It was apparent that the issue was whether the doctor’s very marginal practice of law was a “gainful” occupation under the policy. I concluded that it was not, and that there appeared to be no basis to terminate benefits.

As expected, the insurance company, motivated by the hope of saving hundreds of thousands of dollars in benefit payments, attempted to solidify their position by listing all of the reasons Dr. Z no longer met the contract’s definition of total disability:

- He passed the bar exam, implying that he could think analytically.
- An in-house medical record review

by the insurance company’s consulting orthopedic surgeon concluded that the patient could sit for long periods of time, could stand with intermittent rest periods and could walk short distances.

■ An independent medical exam concluded that Dr. Z did have limitations that would probably not be compatible with an active thoracic surgery practice, but should allow work within the legal profession.

In the carrier’s mind, they justifiably terminated benefits.

The insurance company wrongly assumed that Dr. Z would simply lie down. Many disability insurance companies have become extremely proficient at denying benefits in situations where policy terms are subject to multiple interpretations. For many carriers, claim denials have become a self-fulfilling prophecy. If you say no to enough policyholders, a sizable percentage will accept your decision.

But in the disability income insurance arena, “no” does not necessarily mean no. Dr. Z recognized that he had become a licensed attorney, but asked: was law as he practiced it a gainful occupation?

#### Voices of reason

The expert witnesses retained to support Dr. Z’s claim were the decisive factor in getting the insurance company to reverse

their claim denial. A vocational consultant in tandem with a legal placement counselor conducted a legal employment market study of the area where Dr. Z resides. They concluded that there was no available job or market for a newly trained attorney who can make only limited court appearances, must rest frequently, may be periodically medicated and must work hours that will permit him to avoid rush hour drive time.

Dr. Z’s own treating physician for the first time was asked to directly enumerate Dr. Z’s daily limitations, which addressed point-by-point why he could not effectively practice law. A forensic financial review of Dr. Z’s legal work and billing proved conclusively that the availability of potential clients that could use Dr. Z’s legal services was practically nonexistent.

In the end, Dr. Z’s claim with all past due benefits was paid. He continues to collect benefits as he struggles to practice law. However, keep in mind that if Dr. Z’s medical and cognitive condition improves to the point that he can actually perform legal services for a reasonable fee, his benefits will rightfully terminate.

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