



# MEDICINE & BUSINESS:

## The “Medical Occupation” Definition of Disability: Don’t Believe the Hype

By Lawrence B. Keller

### OVERVIEW

As a physician, you have probably been told that you should make sure that you purchase a policy with a true “Own-Occupation” or “Own Specialty” definition of disability for the entire benefit period (to age 65 or longer). Now, this “conventional wisdom” is being challenged by one well-known disability insurance provider - but should it be?

### “OWN-OCCUPATION” DEFINITION OF TOTAL DISABILITY

Typically, “total disability” or “totally disabled” means that due to an accident or illness, you are not able to perform the “material and substantial” duties of your occupation. Some companies will even go so far as to state that if you have limited your practice to a professionally recognized specialty in medicine, that specialty will be deemed to be your occupation.

Meaning, if you are a neurosurgeon, and cannot perform neurological surgery (provided you were performing those duties immediately prior to your disability), you would be entitled to receive full disability benefits – even if you decided to work in another occupation or medical specialty earning the same (or more) income than you did prior to your disability.

For example, let’s assume that a surgeon developed a peripheral neuropathy of the hands and was forced to stop performing surgery. As a result, he subsequently decided to go to law school and built a lucrative legal practice representing physicians. He now earns more money in this career than he did as a practicing surgeon. Should he be entitled to disability benefits?

Some would argue that this individual does not “need” to be collecting and as a result of this “double dipping” has profited from his disability. Does this argument really make sense? One must have a great desire to become a physician - a driving passion to help people, to be challenged, and to learn throughout their lifetime. They will sacrifice their time and energy for the care of their patients, even to great detriment to themselves and their families. At the same time, they have also invested substantial amounts of money in their education and the practice of medicine in hope of career advancement, respect, monetary reward and job satisfaction.

A policy with a true “Own-Occupation” definition of disability does not allow a claimant to profit. It allows an insured to utilize their education, training and experience to

transition into another occupation, do well at it and be rewarded financially for doing so without penalty for being smart, motivated and resourceful. Additionally, they may still be paying off educational debt and/or incurring new debts as they change their career path.

One must also remember that in order to begin and remain on claim, an insured must be unable to perform the material and substantial duties of their occupation, as well as be under the regular care of a physician appropriate for their injury or sickness.

### THE “MEDICAL OCCUPATION” DEFINITION OF TOTAL DISABILITY

This patent pending definition of total disability is being heavily marketed by one well-know insurer. Unfortunately, this specific company has not been competitive in the “medical market” since September, 1997 as they no longer were offering a true “Own-Occupation” definition of disability to medical professionals. This decision was made due to continued “morbidity deterioration in the medical marketplace,” which consisted largely of physicians and surgeons.

This meant that a large percentage of agents representing this company now felt compelled to “sell away” and place their disability insurance business with other companies. In short, after years of losing premium dollars to competitors, they want to earn those dollars back.

The “Medical Occupation” definition of disability hinges on the fact that physicians, including surgeons, have several duties and in order to collect full benefits under the “Own-Occupation” definition of disability, they would need to be unable to perform all of their duties – unless they only had one principal duty at the time of claim, which, in most cases is unrealistic. So, the argument is that since you would not collect under “Own-Occupation” anyway, we will provide you with a definition of disability that is more flexible.

The “Medical Occupation” definition of disability, in the case of a surgeon, works like this: If before disability, more than 50% of your time was spent providing direct patient care or services and you are unable to perform the principal procedures of your procedure-based, board-certifiable medical specialty and you choose to discontinue gainful employment, full benefits would be paid. Otherwise, if you decided to continue to work, earning an income, your disability benefits would be reduced or eliminated.

So what message does this send? How many surgeons would discontinue the practice of medicine in order to collect their disability benefits? Most, if not all, would continue to work in some fashion. Assuming they are earning an income, this would cause their disability claim to

policies are required to contain the following definition: “Total disability” shall be defined in California Contracts during the usual or own-occupation period as: a disability that renders one unable to perform with reasonable continuity the substantial and material acts necessary



focus on loss of income rather than their inability to perform surgery.

Upon review of this company’s marketing materials, disability insurance attorney Mark DeBofsky of Daley, DeBofsky & Bryant ([www.ddbchicago.com](http://www.ddbchicago.com)) stated that they “are very confusing – and I believe unfair to the insured. The definition transforms claims that might otherwise be a total disability claim into a partial or residual disability claim”. An excellent example is *Dowdle v. National Life Insurance Company*, 407 F.3d 967 (8th Cir. 5/19/2005) where a surgeon who injured his back in a plane crash and could no longer perform surgery was still able to conduct office examinations - he was found totally disabled, because the disability materially changed the usual and customary manner in which the occupation was performed”.

Under the “Medical Occupation” definition of disability, this would never be the case unless the insured chose to discontinue gainful employment or made sure to lose enough income to qualify for full benefits.

Attorney DeBofsky also stated “the best approach I have seen is the mandatory language from the California Settlement Agreement between UNUM and the California Department of Insurance”. All new

to pursue his or her usual occupation in the usual and customary way.

### SUMMARY

The “Medical Occupation” definition of disability was recently introduced to the marketplace by a well-known insurer. As I now enter my 20th year in the financial services business, I can say that the more things change, the more they stay the same and disability insurance is no different. Physicians are researchers by nature and when supplied with enough information, they will make well-informed, educated decisions that will allow them to sleep comfortably. So, listen to the arguments, do your homework and don’t take the purchase of disability insurance lightly – your entire financial future may one day depend on it.

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