

What Does Medical Own Occupation Really Mean?

Scholarship Update: Tomorrow is the last day to get your scholarship application in (or to volunteer to be a judge.) You can still donate to a great cause! [Details here](#).

[Editor's Note: Long-term readers know I am not happy with many of the business practices of Northwestern Mutual Life Insurance company. Not only do they use undertrained interns to sell whole life insurance inappropriately to financially unsophisticated medical students like me, but I don't find their term life insurance to be priced competitively either. To make matters worse, over the last decade or two they keep screwing around with the definition of disability in their disability insurance policies. I understand that decades ago they used to have a true own occupation definition that probably worked just fine for doctors. I don't know why, but they went away from it. Then they came up with a "Medical Occupation Definition" (MOD), which sounds awesome because it's "Medical" and we're "Medical" so it must be great, right? Except it's not. It's not based on the inability to do your job, it's based on a loss of income. So if they chose to work at something other than what they were disabled from, they were only paid proportionately rather than getting their full benefit. Well, they realized doctors in the know weren't so interested in that. Doctors wanted True Own Occupation disability insurance. So NML came up with a "Medical Own Occupation Definition" (MOOD). Not only does it have the words "own occupation" in it, but it also has the word "medical" in it. So it must be even better than regular old own occupation insurance, right? Well, not exactly. In this post, insurance expert [Lawrence B. Keller](#), CFP®, CLU®, ChFC®, RHU®, LUTCF, explains why MOOD is not the same as true own occupation. Larry is well-known to long-time blog readers for multiple guest posts. He has also been a long-term advertiser and is a Platinum sponsor of our scholarship contest. Hopefully NML will eventually just go back to a boring old true own occupation definition of disability so posts like this don't need to be written.]



Not in the MOOD to Purchase Disability Insurance? I'm Not Surprised

Arguably, the definition of "disability" is the most important aspect of a physician's disability insurance policy. Therefore, you must pay careful attention to the definition of disability found in your policy as it will ultimately determine how any claim you make for benefits will be judged. For purposes of this article, I will limit my comparison to a policy with a true "Own-Occupation" definition of total disability and the recently introduced Medical "Own-Occupation" definition (MOOD) of total disability.

"Own-Occupation" Definition of Total Disability

The term "Own-Occupation" and the definition of total disability associated with it means different things to different people, all depending upon who you ask. If nothing else, most surgeons have been told to purchase a policy with an "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. This definition of total disability makes it possible for you to work in another occupation or medical specialty and still receive your full disability benefits – even if you are earning the same or more income than you were prior to your disability.

A common question asked is can a surgeon be deemed "totally disabled" if he is unable to operate but can still perform the other duties associated with their occupation? There is no black letter law that defines the material and substantial duties of

an individual's occupation. Courts have used various tests to determine if an insured's occupational duties are material and substantial versus incidental or peripheral. Whether or not a certain occupational duty is material depends on the duty's importance to that profession, the amount of time the duty consumes, and its qualitative importance to the professional mission¹.

The most widely accepted reading of the total disability provision of the policy requires that the insured need only show an inability to perform a single material job duty. The court found *McFarland v. General American Life Insurance Co.*, 149 F.3d 583 (7th Cir. 1998) instructive in its analysis of this issue. The court gave the example of a baseball player, explaining: [I]f a shortstop, whose principal duties include running, hitting, catching, and throwing, were injured such that he could no longer throw, he would be totally disabled because he could no longer be employed as a shortstop. Even though the shortstop could still run, hit and catch (a significant portion of his duties), throwing is an essential function for a shortstop and thus the inability to throw means that he is unable to perform "the material and substantial duties" of his occupation....



Lawrence Keller

The same could be said for other occupations. Attorney Mark DeBofsky of DeBofsky, Sherman & Casciari, PC (www.debofsky.com) states that "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".

Finally, in *Kaelin v. Tenet Employee Benefit Plan*, 405 F.Supp.2d 562 (2005) the Court analyzed the duties of an orthopedic surgeon, and commented, "A doctor credentialed as an orthopedic surgeon who conducts only office hours and administrative duties is obviously not performing the material duties of the usual work of an orthopedic surgeon; that is, conducting orthopedic surgery." Kaelin, a Board Certified orthopedic surgeon became unable to perform surgery following an accident, but remained able to see patients in his office. His office practice was merely incidental to the performance of surgery. Dr. Kaelin could no longer perform surgery and "an inability to perform [surgery] means that one is no longer practicing the regular occupation of an orthopedic surgeon. Rather, he or she is an orthopedist."

The Medical "Own-Occupation" (MOOD) Definition of Total Disability

This "unique" definition states that the physician or dentist can be considered totally disabled in one of two ways.

1. If you are Totally Disabled and you can no longer do any of your substantial and material duties, you can take your full disability benefit.

OR

2. If you can do one or more of your substantial and material duties, you can change your occupation altogether and receive some or all of your benefit.

To be considered Totally Disabled the second way; you must meet all of the following:



- The majority of your time prior to Disability has to be spent in direct patient care and services
- You are unable to perform the duties that accounted for more than 50% of billed charges
- You are not working

Billing Codes mean codes generally accepted by the healthcare and insurance industries, such as Current Procedural Terminology (CPT) or American Dental Association (ADA), that are used to identify and describe medical, surgical, diagnostic, or dental services directly performed by the Insured.

If the Insured can perform one or more of the substantial and material duties of the Regular Occupation and is not considered Totally Disabled, the Insured may qualify as Partially Disabled.

An Example

Dr. Smith, an Orthopedic Surgeon, was earning \$40,000 per month prior to his disability. He also owned an individual “Own-Occupation” disability insurance policy with a monthly benefit of \$10,000.

Unfortunately, Dr. Smith developed a peripheral neuropathy of the hands and was forced to stop performing surgery. He would likely qualify for total disability benefits under his policy as long as the occupational analysis showed that just prior to disability his/her main duties were performing surgery and the majority of his/her office based practice was pre-operative consultations and post-operative follow-up.

He subsequently decides to work in another occupation and earns \$34,000 month. However, his new income is not taken into consideration and his full disability insurance benefits continued to be paid as he remains unable to perform the material and substantial duties of his occupation.

Therefore, his monthly income would be \$44,000. This would consist of \$34,000 (income from his new occupation) plus \$10,000 (his disability insurance policy’s monthly benefit)

However, under the Medical “Own-Occupation” definition of total disability, the calculation would be as follows:

The calculation would be the lesser of:

- \$10,000 (his individual disability insurance policy’s monthly benefit) or
- $\$40,000 - \$34,000 = \$6,000$ (Loss of Earned Income)

Since \$6,000 is the lesser of the two, it is the Calculated Benefit.

Therefore, his monthly income would be \$40,000. This would consist of \$34,000 (income from his new occupation) plus \$6,000 (his Loss of Earned Income)

How Do These Definitions Differ?

The Medical “Own-Occupation” definition of totally disability takes the focus of a claim for total disability benefits away from the inability to perform the “substantial and material” duties since, if at that point, you decide to work in a new occupation, the Medical “Own-Occupation” can bring you back to your pre-disability income by combining your calculated monthly benefit with the income earned in a new occupation.

Annual Reconciliation

Since this policy pays benefits based upon loss of income, this policy also states that “The Company has the right to conduct annual reconciliations to assess whether Earned Income reported by the Insured during a period of Disability is consistent with federal income tax (FIT) returns. Benefit underpayments discovered as a result of the reconciliation process will be paid to the Owner. The Company shall have the right to recover benefit overpayments”.

The Argument

Some would argue that by allowing Dr. Smith to collect his full disability insurance benefit and all of the income from his new occupation, he is “double dipping” and 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. In my opinion, 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 as a result of their efforts and be rewarded financially, 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.

Summary

While the new Medical “Own-Occupation” (MOOD) definition of total disability is being marketed as “unique” and providing physicians and dentists with “more choice” and “more control” if they become partially or fully disabled, I don’t believe this to be the case. A policy with a true “Own-Occupation” definition of Total Disability makes it possible for you to continue working and earn unlimited income, so long as your disability renders you unable to perform the “material and substantial” duties of your occupation. Some companies including Berkshire, Standard, Ameritas and Ohio National will even go so far as to state that if you have limited your practice to a single medical specialty, that specialty will be deemed to be your occupation.

In fact, in their most recent offering*, Berkshire adds a qualifier or a threshold that can be met in order to receive full disability insurance benefits if you are a surgeon or invasive practitioner by stating that “If your occupation is limited to a Medical Doctor or Doctor of Osteopathy and more than 50% of income is earned from performing surgical procedures, we will consider you to be totally disabled even if you are gainfully employed in your practice or another occupation so long as, solely due to injury or sickness, you are not able to perform surgical procedures. This language changes the focus from solely your duties to your source of earnings and provides more ways to qualify for total disability benefits.

Compliance mandated legal mumbo-jumbo:

1 Lasser v Reliance Standard Life Ins. Co, 146 F Supp 2d 619, 636 (DNJ 2001), judgment aff’d, 344 F3d 381 (3d Cir 2003).

An individual’s eligibility for benefits is determined on a case-by- case basis, taking into consideration the factual circumstances presented as well as the terms and conditions of his/her policy(ies).

**Individual disability Policy Forms 18ID and 18UD underwritten and issued by Berkshire Life Insurance Company of America (BLICOA), Pittsfield, MA. BLICOA is a wholly owned stock subsidiary of and administrator for The Guardian Life Insurance Company of America, New York, NY. Optional riders are available for an additional premium. Product provisions and availability may vary by state.*

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