

# Do You Have a True 'Own Occupation' Policy?

*Not all disability policies are created equal, and if you've got one from 2000 or after, chances are you may not have the coverage you think you do*

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**As dentists, you probably have at least one disability insurance policy. But do you know what your policy actually says, and what would happen if you ever needed to dust it off and file a claim?**

Our firm exclusively represents professionals (primarily dentists, physicians and attorneys) whose disability claims have been denied or are being targeted for termination. We don't advise dentists on the "best" policies to buy on the front end—that's the role of financial advisors and agents who have access to up-to-date information about the policies currently on the market. However, as insurance bad-faith attorneys, we review and litigate disability policies on a regular basis and have seen an array of policies from virtually all of the companies selling disability insurance today. Our knowledge of what the claims process entails, combined with our substantial experience working exclusively with professionals, puts us in a unique position to identify and explain the pitfalls that can derail a dentist's claim.

In most instances, these pitfalls can be avoided by understanding the "rules" outlined in your policy and having a comprehensive transition plan that fits within those parameters. Unfortunately, in our experience, most dentists don't have an accurate understanding of how their disability policies actually work.

As we've reviewed and litigated dentist claims over the past several years, it's become apparent that newer disability policies being sold today are much more complex and stringent than the policies sold in the 1980s and '90s. While disability policies before 2000 used to be only 10–15 pages and more or less uniform, the newest policies we are seeing (2016 and later) can be 50–60 pages and contain multiple riders that modify the definitions and provisions of the base policy. Often, key definitions are placed at the beginning or end of the policies, and it takes significant time to review and cross-reference each provision to determine what

the policy is actually saying. In many instances, the meaning of a crucial term or provision remains convoluted and unclear, and the interpretation of the key phrase or policy term must be fought in court.

Because of these contractual complexities and the amount of money on the line, it is imperative that dentists understand their policy and how the claims process works *before* they file a claim. Failing to do so can result in a claim denial or termination and, in some instances, render the claim unsalvageable.

## Dentist claims, in particular, are easier to undercut

While most dentists have a disability policy, many dentists have misconceptions about what those policies actually cover. Surprisingly, a significant number of the dentists we speak with have lost or misplaced their policies, and many of those who did keep copies have not taken the time to sit down and read these important documents. They just assume that they'll need the policy only if there's a catastrophic accident, determine that the chances of that happening are relatively low, and trust that the insurance company will tell them what they need to do in the event they need to file a claim.

In reality, as a dentist, if you do file a claim, it likely won't be because of a catastrophic injury. Because of the physically demanding nature of their job, most of our clients are dentists. In our experience most dentists actually file claims based upon slowly progressive conditions such as degenerative disc disease, carpal tunnel syndrome and ulnar neuropathy, or mental health conditions such as anxiety, panic attacks and major depressive disorder.

These types of conditions are difficult to prove with objective evidence, and for that reason alone are often targeted for denial/termination. They also give rise to several difficult dilemmas that are not present in other claims.

For instance, dentists with a slowly progressive condition such as a tremor or unpredictable conditions such as panic attacks must constantly assess whether it's safe to

**Table 1:** Definition of "Total Disability"

What the Fine Print Says	Why It Matters
"The insured is totally disabled when both unable to perform the principal duties of the regular occupation and not gainfully employed in any occupation."	<ul style="list-style-type: none"> <li>• If you take a new job, you lose your total disability benefits.</li> <li>• Financial scrutiny from the insurer (among other things, the insurer will typically request your tax returns on a yearly basis to see if you are working in any capacity).</li> </ul>
Total disability means you are: "Prevented from performing the material and substantial duties of your regular occupation, but gainfully employed in another occupation."	<ul style="list-style-type: none"> <li>• If you are not employed in another job, you cannot collect total disability benefits.</li> </ul>
<p>"Until we have paid benefits for five years in the same claim, total disability means that, because of sickness or injury, you are not able to perform the major duties of your occupation.</p> <p>"After that in the same claim, total disability means that . . . you are not able to perform the major duties of your occupation and you are not at work in any occupation."</p>	<ul style="list-style-type: none"> <li>• You have "own occupation" coverage for only a limited number of years.</li> </ul>

keep practicing—and whether they’re risking board sanctions or a malpractice lawsuit by doing so. If they own their practice, they must determine when they’re going to sell it, or worry about what will happen to the practice if the dentist undergoes surgery. And if the condition is a chronic, degenerative condition that is made worse by practicing, such as cervical radiculopathy, they must assess whether continuing to practice is also placing their own health at risk.

Additionally, unlike catastrophic loss scenarios, these types of disability claims are more nuanced. Most disability policies sold to professionals contain provisions that make it difficult—and sometimes impossible—to collect total disability benefits in situations where a dentist makes occupational changes before filing for disability, such as modifying hours and job duties for extended periods or pursuing other employment opportunities. The provisions are often used by insurers to pay only partial benefits or justify claim denials on technicalities that are usually unrelated to the existence or severity of the dentist’s medical condition. If a dentist violates the “rules” set forth in these provisions, it can also shield insurers from bad-faith liability and make it more difficult to reverse a claim denial or termination, so it’s important for dentists to be aware of and avoid these pitfalls when filing a claim.

In this article, we’re going to look at two key policy definitions that can significantly impact your ability to collect under your policy: “total disability” and “occupation.”

## Do you have a true “own occupation” policy?

If you have a disability policy, you probably heard the phrase “own occupation” quite a bit when you were looking at policy options, and you may have even been told that as a dentist, it’s important for you to have a true own occupation policy. But what does that mean?

**Table 2:** Definition of “Occupation”

What the Fine Print Says	Why It Matters
“If the insured is regularly engaged in more than one occupation, all of the occupations of the insured at the time he becomes disabled will be combined together to be ‘his occupation.’ ”	<ul style="list-style-type: none"> <li>Working in capacities other than clinical dentistry can modify “your occupation” under your policy.</li> <li>Taking on a significant amount of administrative tasks can also modify your occupation and expand your material duties under your policy (i.e., the insurer might argue that you were a clinical dentist and a business owner/practice manager, etc., and that your material duties include administrative work).</li> </ul>
“Actively working full-time means the insured member is working at least 20 hours per week doing all the substantial and material duties of his profession or occupation.”	<ul style="list-style-type: none"> <li>Taking extended vacations/absences from clinical dentistry, or reducing your hours, can jeopardize your eligibility to receive benefits under your policy.</li> </ul>
“If the insured is unemployed, retired or not gainfully employed outside the home for more than 15 hours a week at the start of disability, the ‘regular occupation’ of the insured consists of the normal daily activities, including household duties, performed by the insured at the time the insured becomes disabled.”	<ul style="list-style-type: none"> <li>Taking extended vacations/absences from clinical dentistry or reducing your hours can jeopardize your eligibility to receive benefits under your policy.</li> <li>It is difficult to establish that you cannot perform normal daily activities such as personal care, cooking, paying bills, etc.</li> </ul>
“Working an average of more than 40 hours in a week ... is not a material and substantial duty.”	<ul style="list-style-type: none"> <li>Demonstrating an inability to work a full-time schedule/the same number of hours, alone, will not qualify you for total disability benefits. You will also have to demonstrate that you cannot perform the material and substantial duties of your prior occupation.</li> </ul>

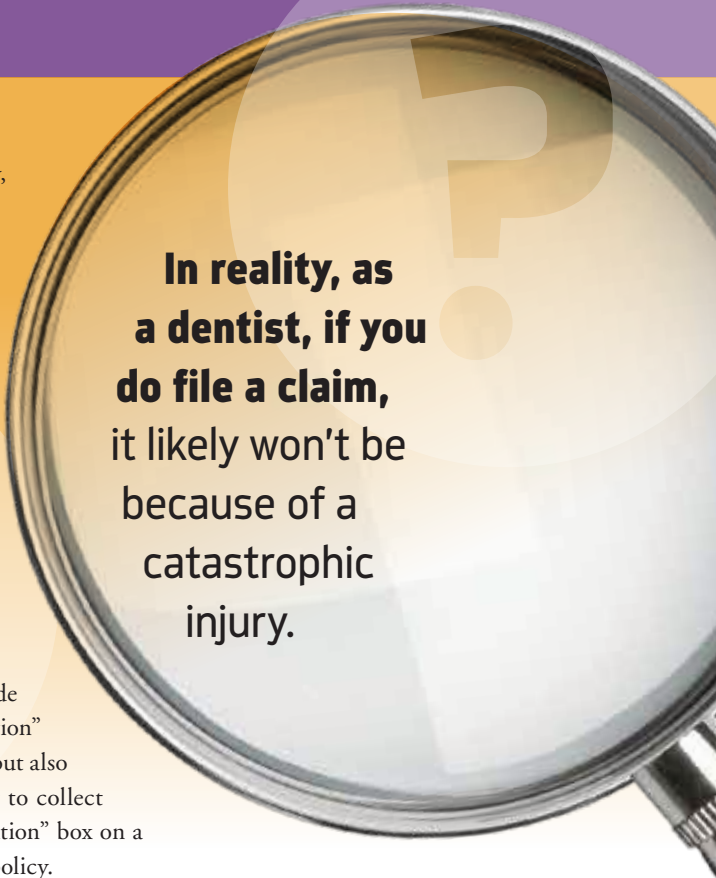
To understand the significance of a true own occupation policy, it's helpful to know a little background about the disability insurance industry. In the late 1980s and early '90s, many companies aggressively marketed disability policies to dentists and, in an effort to stay competitive, most of the companies were essentially offering the same product—a disability policy that provided benefits if you could no longer practice as a dentist, and also allowed you to work in another unrelated capacity. These policies would typically contain a provision that stated something like:

*You will be "totally disabled" even if you are at work in some other capacity, so long as you're not able to work in your occupation.*

This is the ideal, "true own occupation" definition, because it allows you to "double-dip" and collect total disability benefits, in addition to income from a new, unrelated job.

While these true own occupation policies still exist, most companies now sell multiple variations of own occupation policies that don't provide the same coverage. These variations still contain the phrase "own occupation" because those are the magic words they know dentists are looking for, but also contain other significant limitations that can make it more difficult to collect benefits. Consequently, you can no longer just check the "own occupation" box on a policy application and assume you are getting a true own occupation policy.

By way of example, here are just a few of the more common variations of own occupation policies. (For more on this topic, see Table 1, p. 95.)



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**If you have never experienced the disability claims process before, it can be difficult to recognize the significance of certain policy provisions until it is too late and your claim has already been denied.**

- **Own occupation with “no work” provisions.** These provisions *prohibit* you from working in any capacity after you’ve filed for disability. They pay total disability benefits if you can no longer perform your prior occupation, but do not allow you to “double-dip.”
- **Own occupation with “work” provisions.** These provisions *require* you to be unable to work in your previous occupation *and* to be employed in another occupation to collect total disability benefits. In other words, these policies will not pay total disability benefits if you are retired or unemployed.

It’s not uncommon for dentists to have multiple policies with multiple companies. As you might imagine, this can become very problematic if a dentist has one policy with a “no work” provision and another policy with a “work” provision, rendering it impossible to collect total disability benefits under both policies.

- **Limited-duration “own occupation” policies.** These policies pay total disability benefits for a period of time (usually somewhere between two and five years) based on your inability to perform the material and substantial duties of your prior occupation. After that time elapses, you can receive total disability benefits only if you’re unable to work in *any* occupation.

### How is your “occupation” defined?

As you can see, how “total disability” is defined is only part of the equation. To assess whether you are totally disabled, the material and substantial duties of your prior occupation must also be determined.

Most dentists (understandably) assume that their policy defines their occupation as “dentistry,” since that’s what they listed on their policy application. However, the vast majority of policies sold to professionals don’t contain a concrete definition of “your occupation.” Instead, your occupation is defined as whatever you’re doing immediately before filing your disability claim.

Additionally, most of the newer policies being sold to professionals today include a plural definition of occupation (i.e. “your occupation” means the “occupation *or* occupations” you were engaged in immediately before the date of disability). Under this definition of occupation, practicing dentistry would not be enough to preserve a dentistry-specific occupation; you’d also have to avoid performing significant amounts of nonclinical work or any other forms of paid work.

As you might imagine, this becomes problematic for dentists with slowly progressive conditions who can no longer practice full-time and need to supplement their incomes. A common scenario we see is the dentist with a slowly progressive condition who no longer has the stamina to practice five days a week. The dentist starts working only a few days a week, or only a few hours a day, and focuses more on practice management. In the meantime, the dentist seeks out another job, like teaching at a dental school, but doesn’t file a claim until he or she can’t practice at all (say, a year or two later). The insurance company then proceeds to define the dentist’s occupation as a part-time clinical dentist, part-time practice manager and part-time teacher, determines that the dentist can still run a practice and teach, and refuses to pay total disability benefits.

Unfortunately, we see this scenario play out all too often. And, ironically, assuming that the dentist had a “true own occupation” policy, dentists in this scenario might have been able to work at the dental school and collect total disability benefits if they would’ve appropriately timed and reported their limitations before making significant changes to their occupation.

While this is probably one of the most common mistakes we see, newer post-2000 disability policies also have several other requirements in the fine print that can trip up

dentists who make occupational changes without taking into account the requirements of their disability policies. Here are just a few examples of additional occupational requirements often found in “own occupation” policies. (For more on this topic, see Table 2, p. 96.)

- **“Actively working” requirement.** Some policies require you to be actively working a minimum number of hours each week to remain eligible for coverage. If you have a policy with these types of provisions, extended vacations or reducing the number of days you work each week can jeopardize your ability to collect benefits.
- **“Daily activities” provision.** Some policies state that if you are retired, unemployed or even self-employed and working from home, your policy may define the substantial and material duties of your occupation as your “normal daily activities” (e.g., cooking, cleaning, self-care) and require you to be unable to perform them in order to collect benefits. These provisions can become problematic for dentists who stop working for an extended period before filing a claim to see if “taking a break” from dentistry resolves their symptoms.
- **“Hours worked are not a material duty” provision.** These provisions state that “working X hours a week, in itself, is not a material duty.” This is another provision that can significantly affect dentists, in particular. Many dentists assume that reducing their hours shows that they are disabled, but under this provision, the inability to work on a full-time basis is irrelevant to a total-disability determination. Instead, the company will be looking at whether the dentist can perform the *duties* of dentistry—e.g., can you still perform a root canal, regardless of whether you can do root canals every day for a full week?

## The takeaways

As you’ve likely gathered, there are several ways dentists can disqualify themselves from receiving total disability if they rush into a disability claim without taking a close look at their policy first. The examples discussed above are by no means all of the pitfalls that are out there, and the purpose of this article is not to provide an exhaustive list of everything to watch out for; rather, it is to highlight the importance of reading your policy or policies carefully and understanding the coverage you have in place *before* you have to file a claim, so that you understand the “rules” of your particular policy and are not caught off guard by your policy’s requirements.

While it is certainly possible to reverse wrongfully terminated claims, the litigation process is costly and stressful, and can take several years. Sometimes this is unavoidable, if the central issue in a claim is a matter that can be decided only by a court (like the meaning of a key policy term). But in many instances, understanding your policy and having a transition plan can make the chances of your claim ending up in court lower than they would be if you were entering into the claims process blindly.

Additionally, if you have never experienced the disability claims process before, it can be difficult to recognize the significance of certain policy provisions until it is too late and your claim has already been denied. Accordingly, it is a good idea to at least consult with an experienced disability attorney—ideally, *before* filing your claim—and make sure you have an accurate understanding of how your policy works. An experienced disability attorney can also take into account your particular circumstances and help you develop a personalized transition plan so that you do not inadvertently prejudice your ability to collect benefits—particularly if you are a dentist with a slowly progressive or unpredictable condition or are contemplating occupational changes. ■

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