

**A STIFF UPPER LIP CAN LEAD TO GETTING STIFFED BY YOUR INSURER:  
CHRONIC PAIN AND YOUR ABILITY TO COLLECT DISABILITY INSURANCE BENEFITS**

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Dentists are trained to work through adversity. The mental and physical strength and discipline required to survive dental school and build a successful practice makes dentists inured to many of life's difficulties. Disability insurers realized this, and for a number of years they marketed disability insurance policies to dentists at favorable rates, under the assumption that dentists would work through pain, rather than give up lucrative practices to apply for disability benefits.

However, in pricing their policies, disability insurers neglected to consider the physical toll that the practice of dentistry can take on an individual. A survey of recent articles on pain in the dental profession reveals startling figures on the prevalence of neck, back and shoulder pain suffered by dentists. Studies routinely show that more than half of all dentists suffer at least one symptom of musculoskeletal disorder, with one study reporting that 87.2% of dentists surveyed experienced some form of musculoskeletal pain in the preceding 12 months, particularly in the neck, lower back and shoulder.

The causes for these alarming numbers are the repetitive movements and often awkward ergonomic positioning required to perform dental procedures. The dental profession requires frequent bending and application of both strength and touch in order to treat patients. This hunching and bending, over time, can lead to back and shoulder problems, including radiculopathy, bulging discs and rotator cuff injuries. In fact, one of the most common ailments that lead dentists to file for disability insurance benefits is chronic pain related to back and/or shoulder conditions.

The effects of chronic pain can be profound, both physically and psychologically. Of the patients who experience chronic pain, about half experience depression resulting from the pain, and about 10% say they have actually contemplated suicide. The psychological effects of pain are exacerbated by the difficulty many treating physicians have in understanding and alleviating pain. Typically, a dentist with chronic pain might see a pain management specialist for epidural or corticosteroid injections, followed by a physical therapist for therapy, perhaps followed by a chiropractor for manipulation. While each of these might provide temporary relief, research has shown that going from specialist to specialist in search for a cure for pain often does not work. In the words of one pain specialist: "More physicians and more medication are not the solution."

Against these odds, many dentists try to work through the pain for as long as they can, coping by reducing hours or ceasing certain procedures, until they finally reach the point where they have no other option: they must quit working and rely on other sources of income for support. Frequently, this means their disability insurance policies. However, disability insurance policies are written to benefit the insurer, not the dentist, and can actually be read to take advantage of those dentists who have modified their work schedules due to pain.

Dentists who wait until they are at wits end before they file a claim are often at a decided disadvantage in collecting disability insurance benefits. Disability insurers know that these

individuals are at their most vulnerable, both financially and psychologically, and have written policies in ways to limit their financial exposure in these circumstances. Consider the following:

§           **Definition of Occupation:** Many disability insurance policies define a dentist's occupation as "the occupation in which you are regularly engaged *at the time you become totally disabled.*"

Disability insurance companies will often seize on this malleable language to find that dentists who have gradually reduced their hours or procedures, and who have recently engaged in other activities for financial gain, have now contractually changed occupations. With altered tasks resulting from severe pain over the years, a dentist may be surprised when he or she cannot collect benefits because "total disability" means the inability to perform the dentist's pre-disability occupation, which by that time may have changed from full-time clinical dentistry to the following: part-time clinical dentistry, working 3 days per week with flexible hours; no root canals or extractions; largely responsible for overseeing associate dentist, hygienist and staff; involved in office administration; working 1 day a week at the local dental school. By gradually changing responsibilities, the dentist in the example above may find it very difficult to prove that he or she is, or ever will be, totally disabled from what is now part-time work.

Once the dentist's "occupation" has been effectively modified, the carrier will focus on trying to glean precisely what activities he or she is still capable of performing, thus confirming that the dentist is not disabled. If the dentist was able to cement a crown two months ago, why can't he or she do that now? If the dentist could manage staff two weeks ago, why can't he or she now manage a dental office part-time? If the dentist taught prior to becoming disabled, what prevents him or her from doing so now?

Once this picayune, hour-by-hour analysis is completed, the insurance company will then try to bolster its position by searching for any possible ulterior motive. Was the dentist losing money? Had he or she been removed from any insurance plans? Have there been malpractice claims or Dental Board complaints? Are the dentist's malpractice premiums getting higher? Is the dentist at retirement age? Did the dentist dislike practicing?

Thus, the insurance company seeks to take advantage of those in chronic pain by expertly creating a perfect storm, interpreting policy provisions in its favor, while suggesting that the dentist is malingering.

§           **Mental and Nervous Limitation:** Many policies also contain "mental and nervous condition" provisions, limiting the benefits payable to two years when the claimant's condition is a result of a mental health condition.

Dentists will often seek mental health treatment to help them cope with the symptoms of depression and anxiety, which often arise from chronic pain and

related financial stresses. In such cases, insurers often attempt to label the claimant as suffering from a mental condition, limiting their obligation to pay benefits to a maximum of two years, rather than the period otherwise provided in the policy, typically to age 65 or for life.

§ **Sale of Practice:** The reduction of hours associated with chronic pain, coupled with the sale of a practice, although legitimate responses to a deteriorating medical condition, can also raise red flags.

In one recent case, an insurer found that a dentist who reduced his hours, quit performing certain procedures, and sold his practice immediately before filing for disability was engaged in a “retirement lifestyle,” despite the fact that the claimant was profoundly disabled, and sold his practice only because he was no longer able to treat patients safely. The insurance company argued, albeit unsuccessfully, that since the dentist continued working part-time and sold the practice for a profit, he was not in sufficient distress to qualify for payment.

Obviously, the timing of the sale of a practice can have even more direct financial consequences on a dentist. The reduction of hours and cessation of more lucrative procedures often associated with chronic pain or loss in mobility can lead to a reduction in the value of a practice. A practice is typically valued at 70% of adjusted gross revenues. For example, if a dentist has historically produced \$1 million in adjusted gross revenue, but waits until his chronic pain leads to a 50% reduction in revenue, the value of the practice will have dropped by \$350,000.00.

The timing and circumstances surrounding the sale of a practice for a profit and the submission of a successful disability claim requires a plan of action in light of the uneven playing field created by the insurance industry.

None of the problems discussed above are insurmountable; however, they are certainly difficult to tackle alone, against a billion dollar industry with particular expertise in saving money. When faced with pain and a progressive inability to work, it is important to consult with an experienced attorney early, so that you can understand and gauge your financial future.