

DISABILITY INSURANCE AND THE SPECIALIZED ANESTHESIOLOGIST: UNDERSTANDING AND PROTECTING YOUR INVESTMENT

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As the practice of medicine has evolved and become increasingly more complex and specialized, many physicians no longer describe themselves as simply doctors or surgeons, or even by their broader area of practice. Instead, many physicians, particularly in areas like anesthesiology, are categorized by fellowship training or their sub-specialty. Anesthesiologists can obtain fellowship training in cardiothoracic, pediatric, neurosurgical and obstetric care, among other things, and can receive certification by the ABMS in the sub-specialties of pain management, emergency room/critical care medicine, and hospice/palliative care. Although all types of anesthesiology require dedication and training, various focus and sub-specialty areas have markedly different duties and responsibilities, and require unique skills, training and physical abilities, a thorough understanding of which impacts how your own-occupation disability insurance policy should be interpreted.

Pain management obviously requires steady hands and intense concentration, as anesthetics and steroids must be delivered to exceedingly precise pain-generating centers often located within millimeters of the spinal cord or nerve roots. Any impairment of fine motor skills or concentration, even if brief, can have catastrophic results. Complex pain management also has unique stressors predicated on the chronicity and severity of chronic pain, difficulties with diagnosis, patient depression and anxiety, seemingly incurable maladies, and the administration of dangerous and addictive controlled substances. The pain experience is unique and can create anxiety in the anesthesiologist that is qualitatively different than the stressors of other focus or sub-specialty areas.

Palliative care involves some different stressors as it requires intense emotional interaction with patients who are facing the end of life. This takes emotional stamina, which may be difficult for doctors who are themselves suffering from physical pain, depression or anxiety, and often results in a decision to stop practicing due to "burnout" rather than disability.

By contrast, critical care and surgical anesthesia can involve extended periods of sitting/standing, and sustained concentration while multi-tasking as a number of vital signs must be continually monitored while the patient is maintained in a controlled level of consciousness. The abilities to react

immediately and calmly to emergent situations is a job requirement, as is physical strength to support the patient's breathing, manipulate or move an obtunded patient, or perform emergency intubations, tracheotomies or gastric lavage. Additionally, since surgery often occurs on an emergent basis, critical care and surgical anesthesiologists must usually be available on-call to maintain hospital privileges. At any time of the day or night, therefore, the surgical anesthesiologist must provide emergency anesthesia care, regardless of how he or she is feeling at the moment.

Given the range of skills required to perform these various duties, it is not uncommon for an anesthesiologist to become unable to perform the duties of one focus or sub-specialty area due to a disability, but still be able to safely and ethically practice another type of anesthesia. For example, a pain management specialist who develops a slight hand tremor may no longer be able to safely practice pain management, but he may be able to practice surgical anesthesia. Likewise, a critical care specialist who has lower back problems may no longer have the stamina or strength for surgery, but he may be able to work in pain management or palliative care. Even if a physician can no longer physically work in an anesthesia-related specialty, he may still be able to work as a general practitioner or family care physician with additional training.

However, the transition from one focus area, sub-specialty or field of medicine to another is not seamless, and there may be considerable time and expense involved in the transition. If a physician is able to work in another area of medicine, or even in another area of anesthesia, the question often arises as to whether and how much the physician may collect under a disability insurance policy. The answer varies, depending on the facts of each particular situation and the language of the policy at issue. In many cases it is possible to collect the full amount of the disability benefit, even if the anesthesiologist is working within anesthesia or in another area of medicine.

This is a unique concept to understand and often requires a short lesson in history and your recollection of the manner in which your policy was marketed and sold. In the late 1980s through the mid-1990s, disability insurers relaxed their underwriting standards on policies sold to physicians in order to invest the high premiums received in the bull market. Conventional wisdom was that highly-trained physicians would opt to work through their disabilities, rather than give up lucrative practices, and claims would rarely be made. As a result, most policies issued during that time frame contained language that was extremely favorable to the insured, and tens of thousands of policies were sold in an effort to boost insurance company profits. To compete, carriers readily provided policies on short application forms, and policy terms often included provisions such as non-cancelability, steady premiums, benefits payable for life rather than to age 65, additional benefits that could be purchased over time on the same terms as the original policy, and cost of living adjustments.

Of all the bells and whistles, the key marketing hallmark of these liberalized policies was to allow full payment of disability benefits if an insured was disabled from his or her "own occupation," regardless of whether he or she was able to work in another occupation. In turn, the term "occupation" was often defined as "your occupation at the time of disability." Thus, by way of example, an anesthesiologist who sub-specialized in pain management would typically be entitled to receive full disability benefits even if he or she worked solely as a surgical anesthesiologist.

In the late 1990s, interest rates plummeted as managed care emerged, and physicians started making less money. There was no longer an incentive to run busy offices while working through pain and limitations. Additionally, with the rise in malpractice exposure and insurance, including a growing awareness of patient safety issues, many physicians sought to finally obtain the benefit of their bargain on the policies they had purchased years before.

This resulted in a flood of legitimate, and often high-dollar, disability insurance claims that caught the disability insurance industry flat-footed. Policies that were once considered a safe, lucrative investment suddenly became a "bad block" of business. In response, many large disability insurers began to engage in unseemly claims administration practices, which included delaying and denying legitimate claims, using biased medical examiners and intimidation tactics, and misinterpreting the terms of their own policies to attain a financial advantage. This type of conduct resulted in large punitive damage awards in literally hundreds of cases throughout the country.

Some practices were so egregious that they were the topics of *Dateline NBC* and *60 Minutes* segments. The news coverage precipitated a Multi-State Market Conduct Evaluation of the nation's largest carrier, UnumProvident, which was then investigated by the attorneys general for all 50 states and the District of Columbia. UnumProvident settled for a multi-million dollar payment and an agreement to revise its claims handling practices, among other things. The jury is still out (in many cases, literally) on whether UnumProvident has actually changed its practices, or whether it and other carriers are simply paying lip service to their alleged reforms. Whether a sound decision or not, the disability insurance industry has struck this bargain and it must honor expectations that it created as many physicians have been dutifully paying the premiums on these policies for decades.

Unfortunately, despite the obligation to honor their commitments, many disability insurance carriers bank on physicians being unaware of the favorable language contained in their policies and will go to great lengths to generalize occupational definitions in order to deny claims. This occurs with great frequency on claims filed by anesthesiologists. Carriers will often purposely make the claim process as daunting as possible, with numerous pitfalls, in an effort to undo the policy definitions that they created. None of these problems are insurmountable; however, they are certainly difficult to tackle alone, against a billion dollar industry with particular expertise in saving money. When faced with a possible disability insurance claim, it is important to consult with an attorney experienced in this area of the law so that you can understand your policy and have some control over your financial future.