

The 10 Biggest Legal Mistakes Physicians Make When Filing a Claim for Disability

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Executive Summary

The significant increase in physician disability claims over the past several years has caused insurers to scrutinize the terms of their policies and any claims made under them more closely and to use novel and creative theories when denying benefits. At the same time, insurance companies are attempting to increase revenue by significantly raising premiums on new policies, which provide far fewer benefits than policies issued less than a decade ago. Because physicians are no longer a targeted group for disability insurance sales, insureds should familiarize themselves with their policies and the claims process, and continue paying premiums on any policies that they may have purchased through the early 1990s. Since physician claims are scrutinized closely, it is critical that the following mistakes are not made during the claims process.

Mistake # 1 Failing to Consult With Counsel

Physicians who are considering filing a claim for disability insurance benefits are advised to meet with an attorney experienced in the area before submitting a claim for payment. Disability provisions vary greatly in the language used, and coverage is often circumscribed and restricted by qualifying words and phrases. Accordingly, each insurance policy must be individually reviewed to determine whether a particular claim is covered and, if so, how that claim is best presented to ensure payment.

Action Step Physicians should make a coordinated effort with the assistance of an attorney when interpreting their policy, presenting their claim, and providing subsequent information to their carrier.

Mistake # 2 Misunderstanding the Definitions Of "Disability" And "Occupation"

Because there is no such thing as a "standard" disability insurance policy, the definitions of "disability" can significantly vary. Most physicians purchase "own-occupation" policies, which provide compensation following a disability that prevents the insured from performing the particular duties of his or her occupation. Thus, the insured may be entitled to benefits even if he or she could in fact perform work of a different nature. The central issue in many cases is the definition of "total disability," which could variously mean that the insured cannot perform "all" or "every" duty of his or her occupation, or the "substantial and material duties" of his or her occupation. Similarly, the term "occupation" may be specifically defined in the policy (e.g., "invasive cardiologist") or may refer to the insured's occupation immediately prior to the time that disability benefits are sought. In the latter situation, if the physician reduces his or her hours in the months preceding claim filing, the insurer may consider his or her occupation to be part-time rather than full-time. Similarly, the term "occupation" may be comprised not only of the duties of a physician's specialty, but also of significant travel time, teaching engagements or other areas in which the physician spends time or draws revenue. For example, "occupation" may be defined as "internist/professor/business owner," in which case the physician may not be "totally disabled" if he or she can still teach or perform management functions.

Action Step Physicians should read and fully understand their policy terms before filing a claim for benefits.

Mistake # 3 Inadequate Documentation

When submitting a claim and speaking with their carrier, it is important to take notes to assist them in remembering what was said in the event that their claim is denied. They should keep notes of all

telephone conversations (including the date and time of the call, and what was said) and identify the person with whom they were speaking. Every conversation with the carrier should be confirmed in a letter sent by certified mail so that there are no misunderstandings. The "paper trail" may later be used as evidence to establish unreasonable treatment during the claim administration process.

Action Step Starting with their first telephone call to their carrier, physicians should document in detail their conversations and meetings, and confirm everything in writing, sent by certified mail.

Mistake # 4 Blindly Attending an Independent Medical Exam

After submitting their claim, physicians may be asked to submit to an "independent" medical examination by someone chosen and paid for by their insurer. They may also be asked to undergo exams by someone other than a physician. Before submitting to an independent medical exam or any other exam or evaluation, physicians must first ensure that their carrier has a right to conduct the exam per the policy language. For example, a neuropsychological exam is conducted over several days by a psychologist, not a physician, and insurers often use the subjective findings from such an exam to deny benefits. If the policy requires submitting only to "medical exams" or exams "conducted by a physician," there is certainly an argument that a physician need not submit to neuropsychological testing. Further, physicians may wish to be accompanied by an attorney or other legal or medical representatives who can monitor the independent medical exam. Other considerations include receiving the examiner's *curriculum vitae* in advance; limiting the scope of the exam to ensure that no diagnostic test that is painful, protracted, or intrusive will be performed; having the exam videotaped or audiotaped; and receiving a copy of all notes and materials generated.

Action Step Because the "independent" medical exam is a tool used for denying benefits where possible, physicians should work with an attorney to ensure that their rights are protected during this process.

Mistake # 5 Believing All Mental Conditions Are Excluded or Subject To Limitations

Most disability insurance contracts differentiate between mental and physical disabilities. More recent policies cut off benefits for psychiatric conditions after two or three years. Insureds often blindly accept their carrier's decision to deny or limit benefits based on these conditions without considering numerous relevant factors, including whether there are any physical aspects to the mental condition, whether the mental condition has a biological/organic cause, or whether another, covered condition was the legal cause of the disability. Without exploring these issues in detail, insureds often blindly accept that certain conditions are limited or excluded from coverage when in fact they are not.

Action Step Physicians should understand their policy's mental conditions limitation and work with counsel on submitting their claim in such a manner as to ensure payment of benefits.

Mistake # 6 Engaging in Inadequate Communication With Treating Physician

Physicians should not discuss their claim or that they are considering filing for disability insurance benefits with their treatment provider until after they have had several visits. Physicians are often reluctant to support claims for benefits if they question the motivations behind the claims. A physician who has treated, without success, the physician making the claim will likely be more willing to cooperate. It is also important that the physician making the claim communicate his or her symptoms and limitations to the treating physician in an organized and detailed manner so that all relevant information is recorded in the medical records, which the insurer will ultimately request. When finally speaking to the treating physician about the claim, the physician should ensure that the treating physician understands the definition of "disability" under the insurance policy, so that he or she can

accurately opine as to the inability of the physician making the claim to work.

Action Step Physicians should fully discuss their condition with their treating physician to ensure supportive medical records and, after several appointments, work with him or her on submitting the claim for "disability" as defined in the policy.

Mistake # 7 Quantifying Time

Physicians should be wary of insurance companies asking them to compartmentalize in percentages what activities they were engaged in pre- and postdisability. To the extent that there is any crossover, companies will often deny benefits or provide benefits for merely a residual disability. It is important that physicians broadly describe their *important duties* – rather than your incidental duties – so that the insurer has a clear understanding of the thrust of their occupation. For example, in response to a question about principal duties and the percentage of time spent on each duty, an anesthesiologist may be better off stating "100% surgical anesthesia" rather than compartmentalizing each and every incidental task (e.g., patient intake, supervising nurses during surgery, postoperative visits) into discrete percentages. The reason is the insurer may erroneously consider an incidental task a "principal duty," and therefore downgrade the amount of benefits. For example, where a physician has duties as a businessman (e.g., supervising staff, overseeing payroll), the insurer may argue that the disabled physician can still manage his or her practice and is therefore only partially disabled.

Action Step Physicians should not quantify their time until after they fully understand the definitions of "principal duties," "disability," and "occupation" under their policy.

Mistake # 8 Ignoring the Possibility of Surveillance

Insurers are likely to videotape or photograph physicians who have filed for disability insurance benefits. Physicians who engage in any activities that they claimed they could not perform and are caught on tape are likely to have their benefits denied and the contract could be terminated.

Action Step Physicians should not compromise their policy benefits by submitting a fictitious claim.

Mistake # 9 Blindly Accepting That Subjectively Diagnosed Conditions Are Not Covered

Disability insurers often deny benefits by insisting that the insured's subjective symptoms do not provide objective, verifiable evidence of disability. In many cases, there is no provision or contractual requirement mandating that the insured submit objective evidence of disability. Therefore, from the insured's perspective, these insurance companies are merely trying to save money by generously interpreting policy language in favor of a claim termination. Notwithstanding the subjective nature of a particular condition, the insured may be able to secure benefits with ample evidence bearing on the extent and severity of his or her limitations, which is far more important than providing a definitive diagnosis.

Action Step The severity and extent of the limitations are more important than an objectively verifiable diagnosis and must be fully communicated to a physician's insurer.

Mistake # 10 Tossing Out Application, Policy, and Claims Documents

From the time of application forward, physicians should keep copies of everything (including notes from meeting with the insurer's sales representative or agent, the policy application and the policy itself). If the sales representative provided a letter or a verbal representation that the physician jotted down, those notes can go a long way if the insurer says that the policy says something different. Similarly, information that the physician provided on the application may have a bearing on his or her

reasonable expectations at the time of purchase.

Action Step Physicians should keep all of their disability insurance papers and notes in an organized file.

Conclusion

Insurance companies are vigilant in protecting their own interests, which often means not paying claims. Insureds may often need to be even more vigilant in protecting their own interests by seeking experienced counsel to assist them in submitting their claims for benefits.