

## What Does “Specialty Own Occupation” Really Mean?

Policy definitions are confusing, not only to consumers but also to many of the insurance professionals who sell them. Below we will try to provide an understandable explanation of the different types of total disability definitions and how they work. It is critical to understand that **it’s not what the MARKETING MATERIAL says** that governs how your policy defines total disability. It’s what the policy definition says.

Total Disability definitions do three things:

- Define what your occupation is (this is where the “Specialty” language comes into play).
- Define what criteria you must meet in order to be considered totally disabled from your occupation.
- Define what happens if YOU CHOOSE to return to work in another occupation.

### **1) What is the definition of “your occupation”?**

The best policies define your occupation as your “regular or own occupation to age 65.” **This means the insurance company cannot require you to work in some other occupation that they think you are qualified to work in, if you are totally disabled from your own occupation.** Policies that insure your ability to work in your own occupation to age 65 are typically referred to as:

- “Regular Occupation (Reg. Occ) to age 65,”
- “Your Occupation (Your Occ) to age 65,” or
- “Own Occupation (Own Occ) to age 65.”

You should consider these names interchangeable. It’s not the term used that differentiates one total disability definition from another; it’s how the insurance company writes the definition of total disability. So read your definition of total disability carefully. Don’t assume you understand what it means just because your broker says you have “Own Occ to age 65.”

### **What is “Specialty Own Occ”?**

“Specialty Own Occ” further defines and narrows what your occupation is. It means that for purposes of **defining what your occupation is**, the disability contract specifically states your occupation is your legal specialty, assuming you are practicing full time in a recognized specialty. If you are not practicing in a specialty area of law but have a general practice, then “Specialty Own Occ” means your occupation is defined as the generalized practice of law, instead of a sub-specialty.

Most insurance policies do NOT include this “specialty” language. They make statements similar to the following, **“your occupation is the occupation or occupations you are engaged in at the time of disability.”**

Is there a difference between these definitions? That’s the million-dollar question and it’s a very complicated one. To answer this question, you first need to understand what’s required to **qualify** for total disability benefits.

### **2) What criteria must you meet to prove you are totally disabled from your occupation?**

Most carriers state you must be unable to perform the “material duties” or “the material and substantial duties” of your occupation. The insurance company reviews your job duties, **at the**

**time of claim**, and identifies which of those duties they consider “material.” If you cannot do any of those duties, then you are totally disabled. If you can do some of the duties or all of the duties but for less than full-time you are considered partially or residually disabled.

With respect to the practice of law, all legal specialties require the attorney to work with his/her mind, be able to comprehend and communicate complicated subject matter and deal with stress. Trial attorneys must be able to handle the physical and mental rigors of going to court. Are there other “material duties” that an attorney might perform? **It depends on what you are doing at the time of claim.** Are you teaching two days a week or managing the firm? If so, these duties could be considered material also, even by the companies offering “Specialty Own Occ.” Therefore, if you were totally disabled from practicing law but could still teach two days a week and/or manage the firm (and had been doing so before you were disabled), you might not be considered totally disabled.

Below is an example to further illustrate the problem(s) of defining total disability for an attorney.

**Example**

- You are a full-time trial attorney
- You are totally disabled from going to court BUT
- You ARE able to work in another area of law where litigation is not necessary **and you choose not to.**

In the case of trial attorneys, everyone wants to believe that if they cannot go to court, the insurance company will consider them totally disabled. Trial attorneys negotiate settlements without going to court. They do research, file motions, draft documents, take depositions, and meet with clients. All of these duties can be considered a “material” part of being a trial attorney. So, if you can still do these things but cannot go to court, are you considered totally disabled or not? Is it even realistic to think you could have a medical condition that would keep you out of a courtroom but allow you to do all these other duties?

**If you have a letter from the claims department of the insurance company issuing your policy stating, “if you can’t go to court you will be considered totally disabled,” you should qualify as being totally disabled under the example above.** However, without such a letter, you have no guarantee of how your disability will be treated for the reasons described above.

Let’s take our example a step farther. You are unable to go to court but choose to stay and practice law in a specialty that does not require you litigate, say estate and business planning. You see clients, advise them on how to set up wills and trusts to minimize estate taxes, draft these documents, incorporate their businesses, write their buy-sell agreements, etc. How are you going to prove to the insurance company that you can do these things but cannot do the non-litigation parts of a trial attorney’s job and turn the trials over to one of your partners?

In both of these examples, the insurance company is going to want to pay you partial/residual disability benefits, rather than total disability benefits. Keep in mind, insurance companies aren’t in the business of writing total disability checks to every attorney that claims he or she can no longer go to court. **You have to PROVE you are totally disabled, as defined in the policy.**

Finally, insurance companies that do NOT include specialty language in their policies CAN define your occupation as your specialty in law. Some of these carriers claim to do just that.

However, unless you **have a letter from the claims department** stating they will consider your inability to go to court a total disability, you have no guarantee a claim will be paid this way.

**If you are not a full-time litigator**, the Specialty definition has little, if any, value. **For example:** How are you going to convince an insurance company that you are unable to practice your specialty of real-estate law but are able to practice as an estate planning attorney? While each specialty requires different knowledge, they both require the same skill set. For non-litigators and part-time litigators the Specialty definition does nothing to narrow your occupation because the requirements to practice in these areas of law are similar...**you have to be able to think, comprehend and communicate complicated subject matter and deal with stress.** Therefore, either you can practice law or you can't.

So, is a policy with "Specialty Own Occ" better than a policy without "Specialty Own Occ"? If you are a full-time trial attorney and that is the **ONLY DIFFERENCE** in the two contracts, yes. It does provide a more narrow definition of what your occupation is, which is good for you. However, you need to make sure there aren't any other differences in the contracts and determine if the extra premium is worth the perceived benefits of "Specialty Own Occ".

Regardless of whether or not the policy has the "Specialty Definition", one of the most important parts of the definition of total disability is **how long the policy will pay if you are totally disabled from "your own occupation."** The best policies will pay to age 65. This is where the term "Own Occ to 65" came from. Some policies only insure you in your own occupation for 24 or 60 months. Thereafter, in order to be considered totally disabled, **you must prove to the insurance company** you cannot work in any occupation which you are suited for based on education, training, or experience. This allows the insurance company to reduce or stop your benefit payments if **they have a medical opinion saying** you can work in another occupation, even if you refuse to do so. This restriction is found most frequently in Group LTD (which insures everyone in the firm) or in association group policies.

### **3) What happens if YOU CHOOSE to go back to work?**

There are three types of "Own Occupation to age 65" definitions. All three differ in how they pay claims if YOU CHOOSE to return to work in another occupation while you are totally disabled from your own occupation. *The "Specialty" definition can be attached to any of these three definitions.*

**"True Own Occupation to age 65 (True Own Occ)":** This definition of total disability says *if you are totally disabled from your own occupation and you choose to work in another occupation, 100% of the benefit is payable for the entire benefit period.* Benefits are NOT reduced by income earned in another occupation.

This is the definition that insurance agents will tell you is the "best" definition of total disability. Why, because if you are totally disabled from practicing law you collect full benefits, regardless of what you do or how much money you make. **So, the true value of this definition is it allows you to make more money totally disabled than working full-time as an attorney.**

This definition is NOT available through any Group LTD or association group disability product we are aware of, even if their marketing material seems to say it is.

Is there a downside to True Own Occ? Some companies offering "True Own Occ" **limit benefits for mental and nervous disorders (which include stress or stress related conditions and typically substance abuse) to 24 months.** Since stress related illnesses are one of the leading causes of disability this is NOT a provision you want to have in your policy. In addition,

policies with True Own Occ definition are **more expensive** than policies with the other types of “Own Occ to age 65” definitions.

Most Individual products available today offer “**Own Occupation and not working to age 65,**” assuming you have an age 65 benefit period. *This is the **best** definition we have seen in a Group LTD or an association group policy.*

- This means if you are totally disabled from your occupation and **YOU choose not to work in another occupation** (the insurance company cannot force you back to work in a new occupation), 100% of the benefit is payable to age 65.
- With most of the Individual Disability Income products, if **YOU choose** to work in another occupation and **earn less** than 25% of what you did as an attorney, **100% of the benefit is still payable.**
- With most of the Individual Disability Income products, if **YOU choose** to work in another occupation and **earn more** than 25% of what you did as an attorney, your income loss is calculated and that same percentage of your total disability benefit is paid to you.

**Example:** If you were totally disabled from practicing law, worked in another occupation and had a 60% income loss, then 60% of the benefit for total disability would be payable. You must have at least a 20% income loss to qualify for this benefit.

“**Transitional Own Occupation, to age 65**” is a relatively new definition. The difference between this definition and “Own Occupation and not working” is, *if **YOU choose to work in another occupation the disability benefit is NOT reduced unless your benefits for total disability plus the income from your new occupation are MORE than 100% of your income before disability.***

**Example:** If your income prior to disability was \$20,000 per month, your Disability Income benefit was \$10,000 per month, and you were totally disabled from practicing law but **you chose** to work in another occupation, you could earn up to \$10,000 per month in the **new occupation** without the Disability Income benefit being reduced.

### Conclusion

Today, policies offering attorneys “True Own Occ to age 65” **may limit benefits for mental and nervous disorders (which include stress or stress related conditions and typically substance abuse) to 24 months and/or have higher premiums** than policies with “Transitional Own Occ” or “Own Occ and not working.” The only advantage of True Own Occ is it doesn’t reduce your total disability benefit based on how much you earn in another occupation. So, you need to decide if the ability to earn more disabled than working full-time as an attorney is:

1. realistic...Where do you find a job that generates enough income that when combined with your benefit for total disability **exceeds 100% of what you made as a full-time practicing attorney**, keeping in mind that you have a serious medical problem that has caused you to NOT be able to think, comprehend and communicate complicated subject matter and/or deal with stress?
2. If it is realistic, is it worth the extra premium for the True Own Occ definition and having the 24 month limitation for mental and nervous disorders, if this restriction is included in your policy?

**What is of critical importance is having Own Occ to age 65** so that the insurance company cannot force you back to work “in any occupation” after a specific period of time (typically 24 or 60 months of total disability) and benefits that pay to age 65 for mental and nervous disorders. If you want to pay the extra premium for Transitional Own Occ or True Own Occ...do it. However, NOT DOING IT does NOT mean you have made a huge mistake or that your coverage is inadequate.

To make matters even more confusing, **the “specialty definition” can be included in any of the three types of Own Occupation definitions** (True Own Occ, Transitional Own Occ, or Own Occ and not working). Example: You can have a policy that has “True Own Occ” or “True Specialty Own Occ” or “Own Occ and not working” or “Specialty Own Occ and not working,” etc.

“Specialty Own Occ” is another one of those policy provisions that sounds sexy but, **in the real world of law**, may not be any different than “Own Occ to age 65”, for any specialty other than full-time trial law. Even if you are a trial attorney, unless you have a letter from the claims department of the insurance company stating you’ll be considered totally disabled if you can’t go to court, you have no guarantee your policy will pay that way.

If you’ve stuck with us this long, hang in there for a few more paragraphs.

#### **A few other major product differences**

- **The Catastrophic Disability Benefit (CDB)**, offered by some Individual Disability Carriers, allows you to insure **up to 100% of earnings**, in the event you are disabled by a catastrophic disability. Catastrophic disabilities are typically defined as disabilities that result in the inability to perform two or more activities of daily living, or the permanent loss of use of two limbs, or speech, or hearing in both ears or sight in both eyes, or the disability is caused by a cognitive impairment (e.g., Alzheimer’s). Many policies that were issued prior to 2006 do NOT contain this rider. It’s very inexpensive and should be included as part of your coverage.
- **Benefit Update (BUR)/Future Increase Option (FIO)** riders are offered by most Individual Carriers. They guarantee that every 1, 2, or 3 years you have the option of increasing your benefit, regardless of your health, if you qualify financially. **This provision is very important for attorneys who expect their incomes to increase significantly in the future.** Most companies charge an extra premium for these riders.
- **Automatic Increase Option (AIO)/Future Benefit Increase (FBI)** riders are offered by some Individual Carriers. They automatically **(no medical or financial underwriting)** increase your benefit by a stated amount (typically 4% or 5%) or by the change in the CPI, for 5 years. After 5 years, you can renew the rider if your current coverage does not exceed what you qualify for based on your income. Most carriers offering this benefit charge an extra premium for it.

You can request a personalized premium quote and receive the actual policy definitions by returning to the Home Page and clicking the **Request a Quote** button. If you would prefer to speak with a Disability Specialists Advisor, call (888) 279-8348 (7:00 am to 4:00 pm Mountain Time). Just identify yourself as an association member when you call and you will be given information on the programs in which you are interested.

Take the time to talk to a Disability Specialists Advisor and review your current coverage. It could save you premium dollars and/or dramatically increase the amount of benefit you collect if catastrophically disabled.

This article is not intended to be legal advice or a complete comparison of the products offered through the different carriers. Our intent was to point out the differences in some of the more important definitions of disability. Our representations are based on the policy information we reviewed from a variety of Individual and Association Group products. These representations are not binding to the insurance company underwriting the products. The actual policy provisions will determine how claims are paid.