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Getting Past the Landmines of a Disability Claim (Pt. 1)

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As a chiropractor, you know you have to control very carefully the adjustment you perform on the spine of a patient. A "proper adjustment" can reduce or eliminate pain and lead to a happy patient. But what if I attempted to perform a spinal adjustment on one of your patients? Would you expect favorable results? Of course not, since I would have no control over the outcome based upon my lack of experience and training.

Yet some chiropractors submit disability claims and do not get proper advice, and therefore have no control over the outcome of their claims. Some could receive potential benefits in the millions of dollars, yet they take a cavalier approach to this important benefit, compromising their future standard of living.

In order for you (and not the insurance company) to exercise control, you must know the answers to the following questions. Not knowing these answers can mean the difference between success and failure, including the amount of money that will flow into your bank account. Some of these questions relate to how you handle matters before a disability claim; some relate to what you do afterward.

What Should I Do If I Work as a Corporation?



If you work as a corporation, should you have the corporation deduct the disability premiums as business expenses? Will this influence the amount of benefits you receive that are tax-free? If premiums are paid by the corporation, can this prevent you from claiming bad faith if you're forced to sue the insurance company? Can you reverse the premium-paying process where you do not take a business deduction and receive monthly benefits tax-free? Will the same apply to the bad faith issue?

A corporation should typically not deduct the premiums related to personal disability policies as business expenses. Doing so will render any benefits paid as taxable. From a convenience standpoint, the premiums can be billed to the corporation. However, the claimant-owner should make sure the corporation is reimbursed for the premium so that if they're added to your salary, the owner is paying tax on that amount. This ensures the owner will receive tax-free benefits at claim time.

Some CPAs will suggest that if there is no claim for the year, the corporation can reimburse the chiropractor for the premium paid and the corporation can take the premium as a tax deduction. The IRS rule, however, says that in order to receive the benefits tax free, the premium must be paid on a personal basis at least one year prior to the claim beginning date.

As an example, let's say a claim will occur this year and premiums were paid and deducted by your corporation. When you file your tax return the following year, you should be able to show your CPA that you reimbursed the corporation for the current year and all future premiums. You may also have to file an amended tax return for the prior year in order to meet the "one year prior" rule.

That said, even one premium paid and deducted by your corporation would come under the ERISA guidelines. Based on court precedent, you would give up your right to sue the insurance company for bad faith (punitive damages) if you're located in a "bad faith" state that allows such lawsuits. Prior to the court precedent case, if your application showed that the corporation paid for the

premium, you could secure a larger monthly benefit.

Earning \$300,000 per year after business expenses might allow you to secure a \$10,000 monthly benefit if you paid the premium personally. But if it was paid and deducted by the corporation, you could secure a \$12,500 monthly benefit. After the policy is issued (if it was the guaranteed renewable or "non-cancellable" type), you could change the model of premium payment from corporation to personal to receive any claim benefits tax-free, but this would not solve the ERISA issue. If your state does not permit bad-faith lawsuits, then the ERISA issue becomes a non-issue.

When Should I Sell My Practice If I Need to File for Total Disability?

Contrary to some advice from attorneys and others, you should always sell the practice *before* you claim total disability. If you claim total disability before you sell and before you stop working clinically, you will not receive an answer from the insurance company about whether your claim is approved. This is because you did not stop working. Also, if the sale does not go through, an insurance claims person will be asking for more information, but you'll still be working, even though you claimed to be totally disabled.

The insurance company will then question how you can continue to work based on the medical issues you claim to have. Sure, you can hold on to the practice and see if the insurance company will approve your claim; then you'll know it's legitimate. But since you will not receive an answer from the insurance company until you no longer work, this advice does not make sense from a clinical standpoint.

If, after you sell the practice, the insurance company does not approve the claim, you can still seek legal recourse in the way of a lawsuit, or you can work for another chiropractor if you choose. A highly rated disability claim consultant can increase your chances of being approved.

Editor's Note: Part 2 of this article will run in the April digital edition of *DC*.

MARCH 2019