

Truth or Consequences: Rescission Warranted for Health Insurance Application Misrepresentations

Insurance Law Update

March 2012 by [Scott Bloom](#)

In December, the California Court of Appeal affirmed summary judgment to an insurer that had rescinded its healthcare policy because the insured made material misrepresentations in a policy application. *Hagan v. California Physicians' Service*, 2011 WL 6820396 (Cal. Ct. App. Dec. 28, 2011).

For four years, the insured suffered from various illnesses related to her reproductive system. She was treated with medication and had been recommended for surgery. In 2005, she applied for health insurance with Blue Shield of California. Blue Shield's application asked her about her medical history, including specific questions regarding her reproductive health. She denied prior medical history and pre-existing conditions, and Blue Shield issued her a policy.

The insured made a claim for benefits under the Blue Shield policy. During its claim investigation, Blue Shield discovered her history of reproductive health problems, and rescinded the policy. The insured sued Blue Shield, alleging breach of contract and bad faith. The trial court found that the insured had made material misrepresentations in the application, and it granted Blue Shield's motion for summary judgment on the insured's claims.

The Court of Appeal affirmed. It found that the insured had made material misrepresentations warranting rescission. Reasoning that under California law all questions in an application for insurance coverage are material, the Court of Appeal found irrelevant the insured's intention to deceive or to complete the application negligently. The court concluded that rescission is warranted if the application contains false information and found that the insured's application contained false information, although no evidence existed that the insured intended to deceive Blue Shield. The court did not require Blue Shield to establish that it would not have issued the policy but for the

misrepresentations; rather, the touchstone was whether Blue Shield would have charged a different premium or issued the policy on different terms.

The Court of Appeal rejected the insured's contention that the policy terms, indicating that coverage "may be" canceled due to misrepresentations, did not warrant rescission. The court reasoned that rescission and cancellation are different remedies. Unlike cancellation, rescission voids a policy from the outset. Thus, the policy terms were of no help to the insured because the contract is void *ab initio*, or from the beginning.

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