LAW & MEDICINE **Rescinding Health Insurance**

hen he was asked about corporate America during one of his speeches on the presidential campaign trail, former Democratic candidate John Edwards noted, "They don't give the layperson anything; it has to be taken from them." How true this admonition and observation is when it comes to the plight of health plan members whose health insurance coverage is rescinded just when

medical bills come due. The "poster child" for this problem seems to be Health Net Inc. of Woodland Hills, Calif.—for good reason.

On Feb. 21, 2008, California resident Patsy Bates was awarded \$9 million in an arbitration proceeding involving Health Net. Ms. Bates had a health insurance policy from another company, but was convinced by an insurance agent to try Health Net. She applied for the new poli-

cy in July 2003, and Health Net approved her new policy effective Aug. 1. In September of that year, she was diagnosed with breast cancer. Three months later, Health Net asked that she elaborate on certain answers she gave on her enrollment application. In January 2004, Health Net sent Ms. Bates a letter telling her it was rescinding her health insurance policy. This left her, at the time of the arbitration, with unpaid medical bills totaling nearly \$130,000.

Bates sued Health Net for breach of contract, and breach of the duty of good faith and fair dealing. She also claimed that by rescinding her policy, Health Net was guilty of oppression, fraud, or malice.

Evidence presented during the arbitration indicated that after Ms. Bates filled out and signed her application, her agent changed what she gave as her weight; however, he did not tell Ms. Bates about the change, nor did he have her approve the change in writing, as required by law.

One of the standards Health Net used for reviewing applications pertained to weight, i.e., if an applicant over age 50 weighed more than 198 pounds, the application could be declined, or "rated a "+50." Although Ms. Bates' actual weight was not mentioned in the arbitration record, it appears the agent changed the weight listed on the application from another amount to 185. Ms. Bates' application was initially approved without further investigation or follow-up.

Ms. Bates was a victim of one of the frequent "rescission investigations" performed by Health Net employees. Infor-

mation omitted from an application, even by mistake, could be grounds for rescission, and employee bonuses were tied to the rescission investigations. "It's difficult to imagine a policy more reprehensible than tying bonuses to encourage the rescission of health insurance that helps keep the public well and alive," wrote the arbitrator in the case.

Ms. Bates claimed that the rescission of her policy was

in bad faith because it was based upon the information supplied in the initially approved application. If there was a problem, it should have been investigated before the policy was issued so that if it was declined, she could still keep her previous coverage.

nia's major insurers concerning the prac-

A day before the Bates decision came erage provided by Health Net and its member companies is largely illusory because they rescind coverage upon submission of a substantial claim for benefits, as was the case with Ms. Bates. That suit is ongoing.

For its part, Health Net reported that it paid out claims in excess of \$200 million in 2006 and that its program of tying bonuses to number of rescinded health insurance contracts has been dropped. The company also said that it has halted cancellations and that it would be changing its coverage applications and retraining its sales force.

Health Net is not the only California insurer in the crosshairs of legal scrutiny. Los Angeles City Attorney Rocky Delgadillo announced in April that he is suing Anthem Blue Cross for illegally cancelling the policies of more than 6,000 California residents. There is also the year-old class-action suit against Anthem for cancelling policies, and a case joined in last year by the largest organizations representing California doctors and hospitals, accusing the state's largest health plan of illegally and routinely refusing to pay millions of dollars for medical care provided to enrollees whose policies were later cancelled.

Then, of course, there was the much publicized decision earlier this year when Cigna HealthCare denied a liver transplant for a 17-year-old girl in California. The insurer then changed its mind, but it was too late-the girl died a few hours after the reversal was announced. Another insurer decided that after years of paying for nursing care for a badly disabled boy, the boy no longer needed it, even though he suffered from severe brain damage and was unable to walk, sit up, speak, or eat by mouth.

California's Department of Managed Health Care is trying to help people get their policies back. In mid-April, the department announced that it was ordering immediate reinstatement of policies for 26 consumers whose policies the department found were wrongfully rescinded. The department is also ordering a review of all other rescissions over the past 4 years as part of its investigation into the rescission practices of five of the largest health plans that offer coverage to state residents.

From all these examples, one could assert that there is a problem in California with insurers' wanting to get out of insurance contracts once an illness or treatment has occurred. But is it an epidemic, or is this problem of rescission only limited to California? Evidence has not suggested the problem is "systemic" nationwide, but where there is smoke, there surely is fire. One thing is for certain: Insurers seem to be playing the "blame game"-blaming consumers for not filling out applications for coverage properly when these companies have failed to properly investigate the contents of those applications.

Equally noteworthy is that when insurers rescind health coverage due to their own shortcomings, they can still retain premiums paid by patients or employers, deny payments to doctors and health care facilities for care rendered-and perhaps then make their profit margins even heftier. Moreover, buying insurance to protect against a loss or risk is the expectation of only those who buy the insurance-and also, perhaps, the physicians who treat patients because they have certain insurance coverage; they are expecting to be paid by that insurer.

In the end, maybe the Latin, caveat emptor, might be worth thinking about. However, it should never come to this, since the insurance laws of any state in which an insurer wishes to write health policies should be inclusive of a provision or two barring cancellations or rescissions of policies based on innocent or negligently made mistakes done by the insured or anyone acting on behalf of the insured in filling out an application for insurance. Regardless of what remedies are put in place, a perception also certainly exists that rescission of health care coverage only adds to the woes of the health care crisis now engulfing our economy and nation today. But what is important for the reader to know is that maybe health insurers do not insure medical disease or injury, but instead ensure that they will avoid risks themselves once a patient makes a claim.

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BY MILES J. ZAREMSKI, J.D

The arbitrator concluded that Health Net was more concerned with its own financial interests than concerns for the interests of Ms. Bates. The award covered Ms. Bates' medical expenses, emotional distress, and nearly \$8.5 million in punitive damages. According to one newspaper article, this ruling was the first of its kind, and the most powerful rebuke to Califor-

tice of rescinding health insurance policies. out, the Los Angeles City Attorney filed a 47-page lawsuit against Health Net and its various entities for claims based on unfair competition and false advertising (Dkt. No. BC385816, Sup. Ct., Cty. of Los Angeles). The thrust of this lawsuit is that cov-

INDICATIONS

Red Hot Chile Seniors?

When it comes to entitlement programs, who can beat Lo Prado, a working-class suburb of Chile's capital city, Santiago? There, the mayor is handing out free 50-mg Viagra pills to senior citizens who are doctor certified as suffering from erectile dysfunction. No health insurance coverage is needed, but the afflicted age-60-plus citizens do have to register with the Lo Prado health service. Mayor Gonzalo Navarrete, who is a physician and former director of Chile's Institute of Public Health, said that he started the program because "an active sexuality improves the overall quality of life," and that other mayors in the Santiago area have told him they plan similar programs. The Bureau of Indications' South American office will monitor next year's birth rates in the region.

Bread Mold for Better Health

Certain mold cells have a nifty mechanism that protects the mold organism from genetic abnormalities. Seems some University of Missouri researchers have isolated this "meiotic silencing" device, and see potential for its application in us higher life forms to protect against nasties like the HIV virus. When one chromosome in a pair has an extra gene not found in its partner chromosome, it is a good indication of an intruder, and the fungus will "turn off" all copies of that gene during the sexual process known as meiosis. For this "show me" breakthrough, the Missouri scientists received the Beadle and Tatum Award (named after Nobel Prize-winning geneticists George Beadle and Edward Tatum) for outstanding and original research by a scientist using Neurospora, a type of bread mold. So, the next time you find mold on your sandwich, don't say "Eeeww!" Say "Eureka!"

Hypertension: Stink-Bomb It Away

British researchers (at King's College London and Peninsula Medical School, Exeter) have created a drug that pumps up the volume of hydrogen sulfide gas in the body. Testing on laboratory rats showed that the pungent gas is good at widening arteries, hence significantly lowering blood pressure. Although the scientists' article in Circulation proclaimed the potential of "an entirely new therapeutic approach for the treatment of hypertension," we are grateful that the authors also foresee the need for much more research, including safety tests. After all, if the gas responsible for rotten-egg odors were to run rampant in some patients and escape, the environmental side effects might again evoke that Hindenberg hydrogen-type disaster cry, "Oh, the humanity!"

Immunity? It's a Swamp Thing

Louisiana biochemists are working not on gaseous cures but on proteins from alligator blood to help fight the infectious ills of humanity. With MRSA-like complications in burns and diabetic ulcers gaining resistance to antibiotics, "The goal of our project is to find the proteins that lead to the exceptionally strong innate immune system in alligators," said one of the researchers, Kermit Murray, Ph.D., a chemistry profes-Continued on following page

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sor at Louisiana State University, Baton Rouge. In lab studies, gator white-bloodcell extracts killed not only MRSA but several strains of Candida albicans, and showed considerable promise as well against HIV. The unanswered research question: How long does a scientist have to wrestle the gator before it consents to give blood?

Is It Sport, or Is It Research?

Now, we know that early-morning fun runs aren't for everyone, but when a bunch of emergency docs pick dodgeball as the extracurricular sport at their annual meeting,

are they looking for exercise or for professional practice? The Society for Academic Emergency Medicine held its meeting in Washington last month, and no fewer than 16 teams signed up for the SAEM dodgeball tournament-the proceeds of which, it is noted, are donated to the SAEM Research Fund. The requisite waiver form states, "I assume all risk of injury to my person and property that may be sustained in connection with any activity including the tournament or pickup games." No word on whether damaged limbs or concussed craniums are considered the property of the Research Fund.

-Randy Frey

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Pristig desvenilafaxine Extended-Release Tablets BRIEF SUMMARY. See package insert for full Prescribing Information. For further product information and current package insert, please visit www.wyeth.com or call our medical communications department toll-free at 1-800-934-5556.

WARNING: Suicidality and Antidepressant Drugs

WARNING: Suicidality and Antidepressant Drugs Antidepressants increased the risk compared to placebo of suicidal thinking and behavior (suicidality) in children, adolescents, and young adults in short-term studies of Major Depressive Disorder (MDD) and other psychiatric disorders. Anyone considering the use of Pristig or any other antidepressant in a child, adolescent, or young adult must balance this risk with the clinical need. Short-term studies did not show an increase in the risk of suicidality with antidepressants compared to placebo in adults beyond age 24; there was a reduction in risk with antidepressants compared to placebo in adults aged 65 and older. Depression and certain other psychiatric disorders are themselves associated with increases in the risk of suicide. Patients of all ages who are started on antidepressant the areapy should be monitored appropriately and observed closely for clinical worsening, suicidality, or unusual changes in behavior. Families and caregivers should be advised of the need for close observation and communication with the prescriber. Pristig is not approved for use in pediatric patients [see Warnings and Precautions (5.1), Use in Specific Populations (8.4), and Patient Counseling Information (17.1 in the full prescribing information)]. NUICATIONS ANN USAGE: Pristin a selective servicing and propendentine reputate inbihitor (SNE)

INDICATIONS AND USAGE: Pristiq, a selective serotonin and norepinephrine reuptake inhibitor (SNRI), is indicated for the treatment of major depressive disorder (MDD). CONTRAINDICATIONS: Hypersensitivity - Hypersensitivity to desveniafaxine succinate, veniafaxine hydrochloride or to any excipients in the Pristig formulation. Monoamine Oxidase Inhibitors: Pristig must not be used concomitantly in patients taking monoamine oxidase inhibitors (MAOIs) or in patients who have taken MAOIs within the preceding 14 days due to the risk of serious, sometimes fatal, drug interactions with SNRI or SSRI treatment or with other serotonergic drugs. Based on the half-life of desveniafaxine, at least 7 days should be allowed after stopping Pristig before starting an MAOI [see Dosage and Administration (2.5) in the full prescribing information].

who have taken MAUIs within the preceding 14 days due to the risk of serious, sometimes tatal, drug interactions with SNRI or SSRI treatment or with other serotonergic drugs. Based on the half-life of desventlataxine, at least 7 days should be allowed after stopping Pristiq before starting an MAOI [see Dosage and Administration (2.5) in the full prescribing information). WARNINGS AND PRECAUTIONS: Clinical Worsening and Suicide Risk- Patients with major depressive disorder (MDD), both adult and pediatric, may experience worsening of their depression and/or the emergence of suicidai lide totic on adu behavior (suicidail) to runusual changes in behavior, whether or not they are taking antidepressant medications, and this risk may persist until significant remission occurs. Suicide is a known risk of depression and certain other psychiatric disorders, and these disorders themselves are the strongest predictors of suicida: There has been a long-standing concern, however, that antidepressants may have a role in inducing worsening of depression and the emergence of suicidail in certain patients during the early phases of treatment. Pooled analyses of short-term placebo-controlled studies of antidepressant drugs (SSRIs and others) showed that these drugs increase the risk of suicidail in with antidepressants compared to placebo in adults aged 65 and older. The pooled analyses of placebo-controlled studies in children and adolescents with MDD, obsessive compulsive disorder (NDD) or other psychiatric disorders included a total of 24 short-term studies of 9 antidepressant drugs in over 4,400 patients. The pooled analyses of placebo-controlled studies in children and adolescents with MDD, obsessive compulsive disorder (NDD) or other psychiatric disorders included a total of 24 short-term studies (in adults with MDD) or other psychiatric disorders included a total of 24 short-term studies (in adults with MDD) or the reskrift ways dures were discidaility and unal were short in a disolate frik differences (drug y-lacebo diffe Varnings and Precautions (5.9) and Dosage and Administrator (2.3) in the full prescribing information for a description of the risks of discontinuation of Pristig). Families and caregivers of patients being treated with antidepressusts for major depressive disorder or other indications, both psychiatric and nonpsychiatric, should be alerted about the need to monitor patients for the emergence of agitation, irritability, unusual changes in behavior, and the other symptoms described above, as well as the emergence of suicidality, and to report such symptoms immediately to health care providers. Such monitoring should include daily observation by families and caregivers. Prescriptions for Pristig should be written for the smallest quantity of tablets consistent with good patient management, in order to reduce the risk of overdose. Screening patients for bioplar disorder: A major depressive episode may be the initial presentation of bioplar disorder is the is generally believed (though not established in controlled studies) that treating such an episode with an antidepressant alone may increase the likelihood of precipitation of a mixed/manic episode in patients at risk for bipolar disorder. Whether any of the symptoms described above represent such a conversion is unknown. However, prior to initiating treatment with an antidepressant, patients with depressive symptoms should be adequately screened to determine if the year at risk for bipolar disorder; such screening should include a detailed psychiatric history, including a family history of suicide, bipolar disorder, and depression. **Exorotani Syndrome**. The development of a potentially life-threatening serotonin syndrome may occur with Pristig treatment, particularly with concomitant use of other serotonin (including MSOIs). The concomitant use of Pristig and MAOIs is contraindicated [see *Contraindications (4.2)*]. It concomitant treatment with Pristig and an SSRI, another SNRI or a 5-hydroxytythamine receptor agoinst (triptin) is clinically warranted, carelu o

of bleeding associated with the concomitant use of Pristiq and NSAIDs, aspirin, or other drugs that affect coaguiation or bleeding. Marrow-angle Glaucoma- Mydriasis has been reported in associated with Pristiq therefore, patients with raised intracular pressure or those at risk of acute narrow-angle glaucoma (angle-closure glaucoma) should be monitored. Activation of Mania/Hypomania- During all MDD and WKS (vasomotor symptoms) phase 2 and phase 3 studies, maina was reported for approximately 0.1% of patients treated with Pristiq, Activation of Mania/Hypomania- During all MDD and WKS (vasomotor symptoms) phase 2 and phase 3 studies, maina was reported for approximately 0.1% of patients treated with Pristiq, Activation of Mania/Hypomania- During all MDD and WKS (vasomotor symptoms) phases 2 and phase 3 studies, maina was reported in a small proportion of patients with major affective disorder who were treated with other marketed antidepressants. As with all antidepressants, Pristiq should be used cautiously in patients with a rest of this ordiverse flaeactions (6.1). Increases in blood pressure and heart rate were observed in clinical studies with Pristiq, Pristiq has not been evaluated systematically in patients with a rest of thistory of moyacridia lintarction, nustable heart disease. uncontrolled hypertension, or cerebrovascular disease. Patients with these diagnoses, except for cerebrovascular disease, were valued for no clinical studies. Serum Cholestron I. And Triglyceride Evation - Dose-related elevations in fasting serum total cholestron, 1.D.I. (Jow density lipoprotein) cholesterol, and triglyceride during treatment with Pristiq (see Adverse Reactions (6.1). Discontinuation of Treatment with Pristig (see Adverse Reactions (6.1). Discontinuation of therapy. During marketing of SNR (SeetCutte Serotinin Reuptake Inhibitors), there have been systemate of ener symptoms that included trainases, nausea, headrache, irritability, insomia, diarthea, anxiety, treatile, anxiety, anticulary predinated analyte, ces

The provide the provide provide. The possibility of these adverse events issueld be considered in patients treated with Pristiq who present with progressive dyprues, ough, or cless disconflort. Such patients treated with Pristiq who present with progressive dyprues, ough, or cless disconflort. Such patients should be considered. AVVERSE REACTIONS: Clinical Studies Experience: The most commonly observed adverse reactions in string-treated MDD patients in short-term fixed-does studies (incidence ≥5% and at least twice the fast of placebo in the 50- or 100-mg does groups) were nauses, dizziness, insomnia, hyperhidrosis, constipation, somnoinec, decreased appetite, anxiety, and specific male sexual function disorders. Adverse reactions reacting are assons for discontinuation of treatment. The most common adverse reactions in the situations reported at source reactions in a treast 2% of the Pristiq-treated patients in the short-term study, up to 9 months, the most common was wonting (2%). Common adverses reactions in the source of the source reactions in the short-term study, up to 9 months, the most common was wonting (2%). Common adverses reactions that occurred in ≥2% of Pristiq-treated MDD patients at any dose in the 8-week, placebo-controlled, fixed-dose, premarketing dinical studies. In placebo controlled, the set of the study weight of the set of the study of the set of the study weight of the set of th

reported in patients who have recently been discontinued from a monoamine oxidase inhibitor (MAO) and started on antidepressants with pharmacological properties similar to Prising (SNRIs or SSNIs), or who have recently had SNRI or SSNI therapy discontinued prior to initiation of an MAO) [see or SSNIs], or who have recently had SNRI or SSNIs (A) and the set of the second solution of the s

Hepatic Impairment- The mean L_a changed from approximately 10 hours in healthy subjects and subjects with mild hepatic impairment to 13 and 14 hours in moderate and severe hepatic impairment, respectively. No adjustment in starting dosage is necessary for patients with hepatic impairment, espectively. No adjustment in starting dosage is necessary for patients with hepatic impairment. **DVERDOSAGE: Human Experience with Overdosage** - There is limited clinical studies, no cases of fatal acute overdose of desvenlafaxine were reported. The adverse reactions reported within 5 days of an overdose - 600 mg that were possibly related to Pristiq included headache, vomiting, agitation, dizziness, nausea, constipation, diarrhea, dry mouth, paresthesia, and tachycardia. Desvenlafaxine (Pristiq) is the major active metabolite of venlafaxine. Overdose experience reported with venlafaxine (the parent drug of Pristiq) is presented below, the identical information can be found in the *Overdosage* section of the venlafaxine package insert. In postmarketing experience, overdose with venlafaxine (the parent drug of Pristiq) is occurred predominantly in combination with alcohol and/or other drugs. The most commonly reported events in overdosage include tachycardia, changes in level of consciousness (ranging from somolence to coruna), mydriasis, seizures, and vomiting. Electrocardiogram changes (e.g., prolongation of 0T interval, bundle branch block, QRS prolongation), sinus and ventricular tachycardia, bradycardia, hypotension, rhabdomyolysis, vertigo, liver necrosis, serotonin syndrome, and death have been reported. Ublished retrospective studies report that venlafaxine overdosage may be associated with an increased risk of fatal outcomes compared to that observed with SSRI antidepressant products, but lower than that for tricyclic antidepressants. Epidemiological studies have shown that venlafaxine treated patients have a higher pre-existing burden of suicide risk factors than massing an overdosage with a large-bore orgastric t