

## LAW &amp; MEDICINE

## Rescinding Health Insurance

When 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admonition and observation is when it comes to the plight of health plan members whose health insurance coverage is rescinded just when medical bills come due.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 policy 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. Information 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.

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 California's major insurers concerning the practice of rescinding health insurance policies.

A day before the Bates decision came 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 coverage 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. ■

MR. ZAREMSKI is a health care attorney who has written and lectured on health care law for more than 30 years; he practices in Northbrook, Ill. Please send comments on this column to [fpnews@elsevier.com](mailto:fpnews@elsevier.com).



BY MILES J. ZAREMSKI, J.D.

## 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 "Eeww!" 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 grate-

ful 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*

Continued from previous page

...sor at Louisiana State University, Baton Rouge. In lab studies, gator white-blood-cell 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

INDEX OF ADVERTISERS

Table listing various pharmaceutical companies and their products, including Alcon Laboratories, Novartis Pharmaceuticals, and Wyeth Pharmaceuticals.

Pristiq 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
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.

INDICATIONS AND USAGE: Pristiq, a selective serotonin and norepinephrine reuptake inhibitor (SNRI), is indicated for the treatment of major depressive disorder (MDD).

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 suicidal ideation and behavior (suicidality) or unusual changes in behavior, whether or not they are taking antidepressant medications, and this risk may persist until significant remission occurs.

of bleeding associated with the concomitant use of Pristiq and NSAIDs, aspirin, or other drugs that affect coagulation or bleeding. Narrow-angle Glaucoma- Mydriasis has been reported in association with Pristiq; therefore, patients with raised intraocular pressure or those at risk of acute narrow-angle glaucoma (angle-closure glaucoma) should be monitored.

ADVERSE REACTIONS: Clinical Studies Experience: The most commonly observed adverse reactions in Pristiq-treated MDD patients in short-term fixed-dose studies (incidence ≥5% and at least twice the rate of placebo in the 50- or 100-mg dose groups) were nausea, dizziness, insomnia, hyperhidrosis, constipation, somnolence, decreased appetite, anxiety, and specific male sexual function disorders.

reported in patients who have recently been discontinued from a monoamine oxidase inhibitor (MAOI) and started on antidepressants with pharmacological properties similar to Pristiq (SNRIs or SSRIs), or who have recently had SNRI or SSRI therapy discontinued prior to initiation of an MAOI [see Contraindications (4.2)]. Serotonergic Drugs- Based on the mechanism of action of Pristiq and the potential for serotonergic syndrome, caution is advised when Pristiq is coadministered with other drugs that may affect the serotonergic neurotransmitter systems [see Warnings and Precautions (5.2)].

OVERDOSE: Human Experience with Overdose- There is limited clinical experience with desvenlafaxine succinate overdose in humans. In premarketing 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.

Telephone numbers for certified poison control centers are listed in the Physicians Desk Reference (PDR). This brief summary is based on Pristiq Prescribing Information W10529C001, revised February 2008.