

## **Health Insurance Rescission Case Upheld by California Appellate Court**

December 28, 2011 by [John LeBlanc](#)

On Wednesday, December 28, 2011, the [First District Court of Appeal](#) affirmed the trial court's granting of summary judgment in [Hagan v. California Physicians' Service dba Blue Shield of California, et al.](#), Case No. A130809 (unpublished), a health insurance rescission matter.

The matter was handled by [Barger & Wolen](#) Senior Partners [John M. LeBlanc](#) and [Sandra Weishart](#), Senior Associates [Ophir Johna](#) and [Vivian Orlando](#), and [Greg Pimstone](#) of [Manatt, Phelps and Phillips](#).

### **Background**

In 2005, the Hagan family applied for health coverage with [Blue Shield of California Life & Health Insurance Company](#). Beginning in 2001, Lori Hagan -- in her mid-thirties -- began to experience heavy menstrual cramping and bleeding. Over the next four years, she saw at least four physicians who diagnosed her with an enlarged uterus, fibroid tumors, menorrhagia and dysmenorrhea. She underwent exploratory laparoscopic surgery under general anesthesia, which confirmed the fibroid tumors and also revealed uterine adhesions and endometrial tissue. Ms. Hagan also underwent hormone therapy to treat the bleeding and severe pain. She was advised on multiple occasions that she needed to consider a hysterectomy or uterine ablation as treatment options.

In applying for insurance coverage, however, the Hagans failed to disclose any of this information, despite application questions that asked the applicants to disclose any treatment, advice or symptoms concerning the female reproductive system, such as abnormal bleeding or fibroids, questions that inquired about any visits to the hospital, outpatient center, surgeries, and questions that requested disclosure of any other symptoms, conditions or recommended treatment not mentioned elsewhere on the application.

In response to the application question that asked the applicants to disclose their last physician visit, Ms. Hagan failed to disclose that she had seen her physician just three weeks earlier, where he had again diagnosed her with painful symptoms related to her fibroids and where they again discussed hysterectomy as an option.

Blue Shield Life rescinded the policy after it discovered these misrepresentations and omissions.

Though not required, Blue Shield Life paid all of the medical expenses incurred by the Hagans through the date of the rescission. The Hagans obtained replacement coverage

within a few days, and Ms. Hagan was not deprived of any medical treatment as a result of the rescission.

Unfortunately, Ms. Hagan later passed away from uterine cancer. John Hagan sued Blue Shield Life alleging breach of contract, breach of the covenant of good faith and fair dealing and punitive damages.

### **The Court's Decision**

In upholding the trial court's decision granting summary judgment, the Court of Appeal first reviewed general principles governing an insurer's right to rescind. It rejected Hagan's argument that the language of Blue Shield Life's policy required it to prove that the Hagans' misrepresentations were intentional.

The Court then reviewed the undisputed evidence in detail, in light of the specific questions on the application, as well as the excuses proffered by Hagan for why Ms. Hagan failed to disclose her long medical history, and concluded that the trial court properly granted summary judgment in Blue Shield Life's favor, in that there were clear misrepresentations and omissions of material facts on the application.

The Court also found that Blue Shield Life did not engage in postclaims underwriting as defined in [California Insurance Code section 10384](#).

The Court held that the case was governed by the legal standards concerning underwriting and rescission set forth in [Nieto v. Blue Shield of California Life & Health Insurance Company](#), 181 Cal. App. 4th 60 (2010) (click [here](#) for list of prior posts on *Nieto*).

According to the Court, Blue Shield Life can only be guilty of postclaims underwriting if the "written information submitted on or with" the Hagans' application gave rise to "reasonable questions" that Blue Shield Life failed to resolve prior to issuing the policy.

Against the background of California law that entitles Blue Shield Life to rely on the accuracy of the information the Hagans provided on their application (*i.e.*, Blue Shield Life was not required to assume any of the Hagans' statements were false), Blue Shield Life properly completed its medical underwriting, and therefore did not violate Insurance Code section 10384.