

When Hidden Truths Become Material Misrepresentations

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A 2021 [survey by Finder.com](#) reveals that roughly 15% of Americans admit to lying on a life insurance application. While significantly lower than the incidence of lying when procuring other types of insurance (auto, 29% and health insurance, 27%), a material misrepresentation on a life insurance application can have significant consequences for insureds or their beneficiaries.

A smoker might lie about the extent of his or her tobacco use to obtain a better premium, or an applicant may lie about his or her family history of chronic heart disease for fear of having a life insurance application rejected or being placed in a higher risk classification. Whatever the motivation, if the insurer learns of the misrepresentation during the application process, they will likely enter the condition into the MIB (formerly Medical Information Bureau) consumer file. MIB maintains a contributory database used by life insurance companies to identify misrepresentations, errors and omissions in the underwriting process. That information can then be accessed MIB member companies for use in underwriting any future applications. Even if the misrepresentation slips through the application process, two recent decisions highlight the risk insureds run if the misrepresentation is discovered within the contestability period.

In *Townsend v. Northwestern Mutual Life Insurance Co.*, Northwestern rescinded two life insurance policies based on material misrepresentations by the plaintiff's deceased husband. Northwestern issued the life policies based on the husband's representations on his medical history questionnaire that he had not used cocaine in the last 10 years. The policy included a contestability clause. The plaintiff's husband died by suicide in April 2019. Following his death, Northwestern reviewed the claim and learned that he was previously involuntarily admitted to a mental health treatment facility for a prior suicide attempt. The facility records reflected that he had used cocaine within the period addressed in the medical questionnaire. Based on that information, Northwestern denied the claim and rescinded the policies. Northwestern stated that if the company had been made aware of the prior drug use, the policies would not have been issued to him in the first place.

Following the rescission and denial of benefits, the plaintiff sued for bad faith and breach of contract. The court granted summary judgment to Northwestern, finding the records containing facts related

to the husband's drug use within 10 years of the questionnaire created a reasonable basis for Northwestern to deny coverage. In a separate case, *Campbell v. Hartford Life & Accident Insurance Co.*, the Sixth Circuit Court of Appeals reversed the district court and remanded with instructions to enter judgment in favor of Hartford based on material misrepresentations in the decedent's application for life insurance benefits. Gary Campbell, whose wife was a Hartford employee, answered "no" in response to a supplemental dependent life insurance application question, which asked whether, in the past five years, he had been diagnosed or treated for drug or alcohol abuse. Based on the decedent's application, Hartford issued the policy in November 2015. The certificate of insurance contained an "incontestability clause," which specified that, absent fraud, life insurance benefits could not be contested more than two years from its effective date.

In April 2016, Campbell was diagnosed with cancer. During the investigation following his death, Hartford learned that his oncologists noted a prior history of alcohol abuse and a diagnosis of "alcohol dependence." The medical records revealed that Campbell struggled with alcohol use in the year preceding his application for life insurance coverage. Campbell died in December 2016 and his wife (as beneficiary) sought life insurance benefits under the policy. Hartford denied the benefits and rescinded coverage. The company determined that Campbell's false answer in the application was a material misrepresentation, and the policy would not have been issued had Hartford had access to Campbell's medical records documenting his alcohol abuse. Campbell's wife appealed the decision twice, arguing that alcohol *dependence* and alcohol *abuse* were two separate diagnoses. However, Hartford upheld its decision and Campbell's wife brought suit under the Employee Retirement Income Security Act (ERISA).

The Sixth Circuit concluded that Hartford's decision to rescind the life insurance coverage was not arbitrary and capricious. The court reasoned that based on the ordinary understanding of alcohol abuse and ample record evidence that Campbell was treated for abuse or excessive use of alcohol in the year before applying for life insurance, the plan administrator rationally determined that checking "no" in the application was a material misrepresentation. Likewise, Campbell's wife's argument that there is a difference between alcohol abuse and alcohol dependence (and hence no material misrepresentation by Campbell) was unpersuasive. The court explained that the administrator's reading of "alcohol abuse" was reasonable because the context of the application did not suggest that "alcohol abuse" should be given its technical meaning but rather be understood in its ordinary and everyday meaning.

While many misrepresentations likely go undetected, these cases illustrate the risks insureds run and the possibility that the policy will be rescinded following death, leaving their beneficiaries without the benefit of the insurance proceeds.

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