

ALERT

# Material Misrepresentations on Medical Center's Insurance Application Entitle Insurer to Rescind Policy

---

November 11, 2013

The United States District Court for the Northern District of Illinois, applying Illinois law, has held that an insurer may rescind its policy where the insured medical center made material misrepresentations on its application about its practice of administering weight loss injections to patients. *Essex Ins. Co. v. Galilee Med. Ctr. SC*, 2013 WL 5770537 (N.D. Ill. Oct. 23, 2013).

A former patient sued the medical center and one of its insured doctors for medical negligence based on the doctor's recommendation and administration to her of medical treatment, which consisted of injection of medications for weight loss purposes. Neither the therapy nor the drugs had been approved by the U.S. Food and Drug Administration. The medical center's insurer sought a declaratory judgment that it was entitled to rescind the policy due to material misrepresentations made by the medical center and the doctor in the policy application. In particular, the insurer relied on negative answers regarding whether the practice dispensed drugs or used injections for weight control and whether it used experimental procedures, drugs, or therapy in treatment.

The court held that, under Illinois law, an insurer can rescind coverage due to a misrepresentation on an application that materially affects the acceptance of the risk by the insurer. The court noted that failure to disclose material information could constitute a misrepresentation and that a misrepresentation could void a policy even if made by mistake or in good faith. The medical center and doctor argued that the answers on their applications were not misrepresentations because they used the drug injections for "size

## Practice Areas

---

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

reduction" rather than "weight reduction," but the court found this argument to be disingenuous. The court further found that the medical center and doctor had failed to demonstrate that there was a genuine issue of fact as to whether the misrepresentations were material. Rather, the court determined that the insurer's detailed questions about weight reduction, drugs, and injections—in addition to a clear statement in the application that the insurer would rely on the information in issuing the policy—demonstrated that those representations were in fact material. Based on these findings, the court granted summary judgment in favor of the insurer and held the policy to be voided and rescinded.

The opinion is available [here](#).