

**ALERT**

# Insured's Misrepresentation in Reinstatement Application Not Material Where Policy Required Insurer to Offer Extension

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Applying California law, the United States District Court for the Southern District of California has held that a dentist's misrepresentation in seeking extension of a policy was not material where the policy required the insurer to offer and allow the extension. *Medical Protective Co. v. Erfani*, 2011 WL 4021071 (S.D. Cal. Sept. 8, 2011).

The dentist had professional liability coverage with the insurer that expired on November 15, 2008. In the event of cancellation or non-renewal, the policy obligated the insurer to offer the dentist an extension contract, which he could accept by payment of the policy premium within 30 days of receipt of the offer. On December 15, 2008, the insurer mailed the required extension offer to the dentist, but the offer was returned as unclaimed. On January 6, 2009, the dentist submitted a request for reinstatement of the policy. In the reinstatement materials, the dentist represented that he was not involved in any claims or potential claims. After receipt of these materials, the insurer agreed to extend the 30-day deadline and allow the dentist to purchase an extension period for the policy.

The insurer subsequently learned, however, that the dentist had been served with a professional malpractice suit on January 2, 2009. Based on this misrepresentation, the insurer sought to rescind the extension contract. The court stated that an insurer can rescind a policy only if an insured's misrepresentation is material to the insurer's issuance of the policy. The court found that the dentist had made a false representation by failing to disclose in the reinstatement materials the pending claim against him. Nevertheless, the court held that this

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misrepresentation was not material because the insurer did not reinstate the policy in reliance on the dentist's statement. Instead, the court found that, because the policy required the insurer to make an offer to extend the policy, the determination to grant the extension following the dentist's acceptance of the offer could not have been in reliance on the dentist's statement, but rather was merely procedural as provided by the policy's terms.