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Subject: Five-Year Review
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Please accept and consider the following comment for your Five-Year Review for Operating Procedures and Uniform Standards.

The Life Application Uniform Standards require the applicant to state on the application that the representations on the application are "true and complete *to the best of my knowledge*."

The law of rescission in some states is in accord with the requirement. Those states require, for rescission, that an insurer must prove that the applicant had knowledge that the representation was false.

However, the law of rescission in many states is to the contrary. New York is a prominent example. Rather than restricting rescission to a punitive measure, those states provide rescission as a remedy for mistake, so that the presence or absence of intent of the applicant to mislead the insurer is irrelevant. If the insurer had had the full facts to which it was entitled, it would not have issued the contract, so the contract is rescinded and the premium is returned. The parties are returned to their original positions to correct the mistake. Materiality is the only requirement, and knowledge of the applicant is not required.

That law was the result of careful deliberation by the legislatures and courts in those states over the remedy of rescission and the public policy of those states to be served by applying that remedy. That deliberation should not be brushed aside by form filing regulation.

To override that careful process of enforcing public policy, as it was explained to Penn Mutual, because "several Compacting States ... require 'true and complete to the best of my knowledge' for applications filed," would support the fears of relinquishment of state sovereignty that many states harbored when considering entering into the Compact.

That language should be included in the applications used in states in which that language is consistent with the law of rescission, and should not be used in the applications used in states in which it would be inconsistent with the law of rescission.

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