

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

COMPLAINT FOR DISCRIMINATION

1. My name is [REDACTED].

2. The Respondent Mutual of Omaha Insurance Company (“Mutual of Omaha”) discriminated against me in access to a place of public accommodation, specifically coverage for long-term care insurance, on the basis of disability (handicap) and sexual orientation, on April 22, 2015 in violation of Massachusetts General Law Chapter 272, §§ 92A and 98.

3. Mutual of Omaha is a Nebraska corporation with a corporate headquarters located at Mutual of Omaha Plaza in Omaha, Nebraska 68175. The address listed on Mutual of Omaha’s letters to me denying long-term care insurance coverage is: P.O. Box, 64901, St. Paul, Minnesota, 55164-0901.

4. On or about November 1, 2014 I applied to Mutual of Omaha for long-term care insurance (Mutual of Omaha Application Number [REDACTED]). The application was submitted jointly with my long-term partner who owns a home we share at [REDACTED], Boston, MA [REDACTED]. We listed that address on our application.

5. The application included a medical questionnaire which I filled out. A Mutual of Omaha representative also interviewed me over the telephone about my medical history. In addition, I provided Mutual of Omaha with an authorization to obtain medical records from my primary care physician.

6. By letter dated February 9, 2015 Mutual of Omaha denied my application for long-term care insurance.

7. The letter listed as the reason for the denial of coverage that I am taking the medication Truvada.

8. Truvada is a medication used to prevent HIV infection in individuals who are not infected with HIV. It is called pre-exposure prophylaxis, or PrEP.

9. Truvada was originally approved by the Food and Drug Administration (FDA) in 2004 as an antiviral medication to treat individuals diagnosed with HIV disease.

10. On July 16, 2012 the FDA approved Truvada for the additional purpose of PrEP as a way for people who do not have HIV to prevent HIV infection by taking a pill every day. In May 2014 the United States Public Health Service released clinical guidelines for the use of Truvada as PrEP.

11. According to the United States Centers for Disease Control and Prevention (CDC), when someone is exposed to HIV through sex or injection drug use, Truvada can work to keep the virus from establishing a permanent infection.

12. Current scientific information indicates that when taken daily PrEP reduces the risk of HIV transmission by numbers approaching 100%. The CDC, for example, states that PrEP has been shown to reduce the risk of transmission by up to 92%. A study by researchers at Kaiser Permanente San Francisco Medical Center released on September 1, 2015 found no new HIV infections among 657 people on PrEP over a 2.5 year period.

13. The use of Truvada as PrEP has been hailed by public health and medical authorities as the scientific breakthrough that can end the HIV epidemic.

14. I am a gay man who is HIV-negative.

15. I was prescribed Truvada by my primary care physician as PrEP.

16. By letter to Mutual of Omaha dated March 30, 2015, I appealed the denial of long-term care insurance. I explained that I was taking Truvada as PrEP, a use approved by the FDA to reduce the risk of HIV infection. I also included a letter from my primary care physician,

██████████, M.D. dated March 26, 2015 which stated: “██████████ is taking Truvada for HIV prevention. Truvada is an extraordinarily safe and effective medication. He maintains a healthy lifestyle and remains in good health.”

17. By letter dated April 22, 2015 to me from Lisa Ging RN, Chief Underwriter, Mutual of Omaha Insurance Company, Mutual of Omaha denied my appeal on the basis that: “We do not offer coverage to anyone who takes the medication Truvada, regardless of whether it is prescribed to treat HIV infection, or is used for pre-exposure prophylaxis. This is in accordance with our underwriting guidelines.”

18. If I had not been taking Truvada, my application for long-term care insurance from Mutual of Omaha would have been accepted.

19. A person who is on Truvada has a dramatically lower risk of acquiring HIV infection than a similarly situated person who is not on Truvada.

20. I was denied long-term care insurance by Mutual of Omaha in violation of Massachusetts General Law Chapter 272, §§ 92A and 98 (public accommodation discrimination) because I was “regarded as” a person with a disability (handicap) within the meaning of Massachusetts General Law Chapter 151B, § 1(17).

21. I was denied long-term care insurance based on myths, fears, stereotypes, and unscientific information about HIV disease and its transmission.

22. The individuals who take Truvada for PrEP are predominantly gay men.

23. Mutual of Omaha’s decision to deny me long-term care insurance violated the sexual orientation nondiscrimination provisions of Massachusetts General Law Chapter 272, §§ 92A and 98 because it was not based on a sound medical basis or a rational underwriting policy, but

instead was based on bias against gay men, and myths, stereotypes and false beliefs that gay male sexuality is inherently risky and unhealthy.

I, [REDACTED], swear and affirm that I have read this complaint and it is true to the best of my knowledge, information and belief.

9/16/2015

DATE



[REDACTED] is represented by:

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