

## The Impact of Kadlec: What the Recent Appellate Opinion Means for Oklahoma Hospitals

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For nearly two years, hospitals, their administrators, and their credentialing committees have been discussing the “Kadlec case,” a lawsuit in Louisiana involving a hospital that failed to disclose a physician’s prior drug use when responding to a request for references from the physician’s new employer; the decision resulted in grave patient harm. The primary issue in the suit was whether a hospital or healthcare provider had a duty to disclose all information when writing a reference for a physician. *Kadlec Medical Center v. Lakeview Anesthesia Associates*, 2005 WL 1309153 (E.D. La.)(May 19, 2005). The decision in this case (the “Trial Court Opinion”) stood for the proposition that hospitals and other healthcare providers have a duty to disclose all information about physicians, both positive and negative, when providing a reference to a new employer or a privileging body. The Appellate Court for the Fifth Circuit recently reversed this decision in part, and issued a new ruling (the “Appellate Court Opinion”) that limits the scope of healthcare providers’ duties when providing references for physicians to other healthcare entities. *Kadlec Medical Center v. Lakeview Anesthesia Associates*, 2008 No. 06-30745 (5th Cir.Ct.App.)(May 8, 2008).

### What Duties Exist under the Appellate Court Opinion?

The Appellate Court Opinion held that, where there is no pre-existing fiduciary duty (such as one might find between a hospital network and one or more of its member hospitals), there is no duty to disclose any information about a physician. The Court also held, however, that when a hospital or healthcare provider assumes the task of writing a reference, a duty is undertaken not to make any false or misleading statements. Furthermore, if a statement is made that is misleading, or that requires clarification, the party that made the statement has a duty to clarify it truthfully.

### What This Ruling Means for Oklahoma Healthcare Providers

Both the Trial Court and Appellate Court Opinions were decided based on Louisiana law; neither decision is binding on Oklahoma healthcare providers. The decisions created a great deal of discussion, however, in both the medical and legal communities, and it is likely that similar cases will be tried in other jurisdictions, including Oklahoma. To help protect themselves from litigation related to the types of disclosure at issue in these Opinions, hospitals and other healthcare providers should require that physicians seeking referrals sign a waiver to allow the release and exchange of information between hospitals and other healthcare providers. Such a release can provide all parties with protection in releasing confidential information, and may help to prevent a hospital from becoming involved in a Kadlec-type lawsuit.

We want you to be as informed as possible about this Appellate Court Opinion and its effect on your healthcare facility and providers. If you have questions or would like to discuss any aspect this decision or its impact on your facility, please do not hesitate to contact us.

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