

COURT WATCH

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Kadlec Medical Center v. Lakeview Anesthesia Associates, Appeal No. 06-30745

Appeal from the United States District Court for the Eastern District of Louisiana to the Fifth Circuit Court of Appeals

TOPIC: When responding to credentialing questions from a healthcare facility, what duty does a healthcare provider or hospital have in responding to the questions?

In *Kadlec Medical Center v. Lakeview Anesthesia Associates*, the Fifth Circuit Court of Appeals examined what duties a physician and hospital have in responding to credentialing questions from another facility. In Kadlec, Dr. Berry, an anesthesiologist, applied for privileges at Kadlec Medical Center (“Kadlec”) in Washington State. Dr. Berry obtained and submitted with his application for privileges two letters of recommendation from his former partners at Louisiana Anesthesia Associates (“LAA”). The letters described Dr. Berry as an “excellent clinician”, who was “highly recommended.” The letters did not mention that Dr. Berry had been terminated from his employment with LAA due to Dr. Berry’s drug dependency.

Kadlec contacted the hospital where Dr. Berry previously worked and asked the hospital to provide it with information regarding any disciplinary action involving Dr. Berry. The hospital chose not to respond to Kadlec’s specific inquiry, but instead sent Kadlec a letter stating that Dr. Berry was employed from March 1997 to September 2001. The letter made no mention of Dr. Berry’s drug problems. Ultimately, Kadlec awarded Dr. Berry anesthesia privileges, and he began working.

Several months later, Dr. Berry sedated a patient for a routine tubal ligation. Following surgery, the patient was found unresponsive. Dr. Berry was called to resuscitate the patient, but was unable to do so. Ultimately, the patient was resuscitated, but suffered a brain injury. Following this incident, Dr. Berry admitted to Kadlec’s administration that he was addicted to prescription drugs, and he voluntarily entered into a drug rehab program.

Kadlec sued LAA and the hospital where Dr. Berry previously worked, claiming that LAA and the hospital misrepresented the facts and circumstances surrounding Dr. Berry’s employment in their letters. A jury found that both LAA and the hospital were liable to Kadlec for the representations they made in their letters regarding Dr. Berry and awarded Kadlec \$8.24 million in damages. LAA and the hospital appealed the jury’s verdict, claiming that any representations they made to Kadlec in the referral letters did not establish liability.

On appeal, the Fifth Circuit Court of Appeals held that by choosing to write the referral letters on behalf of Dr. Berry, LAA and the hospital assumed a duty not to make any misrepresentations in the letters. The Court examined the letters sent by Dr. Berry’s former LAA partners and the hospital and concluded that only the partner’s letters were misleading. The Court reasoned that the LAA partner’s letters were false and misleading because Dr. Berry’s former partners referred to him as a “highly recommended” and “excellent” physician, when they knew he had problems with drug dependency. The Court stated that “once a party volunteers information, it assumes a duty to insure that the information volunteered is correct.” The Court found that the letter submitted by the hospital was not false or misleading because it merely provided Dr. Berry’s dates of employment and did not comment on Dr. Berry’s proficiency as an anesthesiologist.

The Court further held that neither LAA nor the hospital had an affirmative duty to disclose to Kadlec Dr. Berry's addiction to prescription drugs. The Court found that only where special circumstances exist, such as when a fiduciary or confidential relationship exists between the parties, does a party have a duty to disclose such information. The Court stated that protecting an employee's privacy outweighs imposing a broad duty to disclose information on employers. Therefore, LAA and the hospital did not have a duty to inform Kadlec about Dr. Berry's addiction to Demerol. Ultimately, the Fifth Circuit reversed the jury's verdict against the hospital because the hospital did not make misrepresentations of fact to Kadlec. Further, the hospital was under no duty to disclose information regarding Dr. Berry's drug addiction to Kadlec. The Fifth Circuit upheld the jury's verdict against LAA, finding that LAA misled Kadlec regarding Dr. Berry's abilities, despite the fact that LAA had no duty to report Dr. Berry's drug addiction to Kadlec.

While the Fifth Circuit's holding is not binding in West Virginia, it does provide guidance. When a physician or hospital responds to credentialing questions and/or forms from other healthcare facilities, it is important that the physician or hospital only provide truthful information. Physicians and hospitals should take care to not provide the inquiring facility with any misleading or false information.