



OADC OUTLOOK

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December 2013

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President's Message

by Malinda Matlock

I want to express my sincerest gratitude for the honor of being allowed to serve as your OADC President for 2013! When I reflect upon my perspective of OADC and how it has evolved since I first joined as a new lawyer in 1991, I cannot help but gain an immense appreciation for my colleagues in the civil defense bar. While many aspects of our practice have stayed the same over the years, there have been significant changes that have impacted us – some subtly and some not so subtly. Many of those changes have not been so good to our practices. But through it all, our organization remains strong with over 350 members. OADC's challenge is how to respond and bring its members together to weather the changes. This year we attempted to increase our visibility at the capital and through business groups that are actively attempting to influence legislation. We also reached out to the judges in Tulsa and Oklahoma City with invitations to join our members in a Fall CLE. And, our website is currently undergoing a comprehensive update to make it more informative and easier to add content. With these efforts, OADC can be recognized as an organization actively trying to make a positive difference in the legal community.

I have no doubt that our new President for 2014, Jennifer Annis of Atkinson Haskins Nellis Brittingham Gladd & Fiasco in Tulsa, will do a great job in providing leadership and direction for OADC. We really have an important professional role in the legal community and an amazing membership able to serve that role. While I will be stepping down as the 2013 President in January, I look forward to many more years of service with OADC! Please join us at the **Winter Meeting in Tulsa on Friday, January 24, 2014 at the Mayo Hotel** to reconnect with old friends, to meet new colleagues and to celebrate our organization's successes – past and future!

~ Malinda S. Matlock

Omnibus Rule for HIPAA Update

Jason A. McVicker
Atkinson, Haskins, Nellis, Brittingham, Gladd, & Fiasco

Lawyers have been preparing clients to deal with the practical effects of health care reform for years. How many of those same lawyers are prepared for the regulatory changes coming to their own offices? Starting September 23, 2013, the rules governing protected health information (“PHI”) transformed into a new source of direct liability for lawyers.

The U.S. Department of Health and Human Services promulgated the new Omnibus Rule for HIPAA in January 2013. The final rule weighs in at 138 pages, and can be found at 45 CFR Parts 160 and 164, or at “<http://www.gpo.gov/fdsys/pkg/FR-2013-01-25/pdf/2013-01073.pdf>”. Of particular interest is the new cap on fines — \$1.5 million per category, annually.

Most importantly for lawyers, the Omnibus Rule expands liability for business associates. Previously, direct liability was only imposed on “covered entities,” namely health care providers, health plans, and health care clearinghouses. 45 CFR 160.103 defines “business associate” generally as a person who provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to a covered entity. Lawyers have been business associates all along, but now the designation has more tangible consequences. Previously, business associates had only contractual exposure under Business Associate Agreements (“BAAs”) with clients. Now business associates face a whole host of potential regulatory liabilities, including civil and criminal penalties.

Lawyers typically excel at protecting confidential information under the duty of confidentiality. However, a stolen laptop or breached network can expose lawyers to HIPAA liability. Furthermore, business associates like lawyers may be exposed for subcontractor conduct. An indiscreet consultant or a lost disk at the copy shop can cost you money. As such, BAAs are necessary for subcontractors, *including expert witnesses*. Previously-compliant BAAs should be revised and updated. Remember that BAAs are not empty formalities; they are true contracts. Be aware of indemnification, insurance, and risk-management clauses, particularly in light of the new regulations.

Any firm that represents covered entities should track how it handles, documents, and stores PHI. Firms may also need to reevaluate their practices relating to medical records authorizations. Finally, now would be a good time to institute fresh HIPAA training for staff and lawyers to best protect your clients and your firm.

Notice to Members

OADC Board and Officer Positions Available

2014 President Elect / President 2015

Board of Director: 2 year Term, 1 Position Available;
3 year Term, 3 Positions Available

Vice President (2014 Term): with view to President
Elect Position in 2015 & President in 2016

Secretary (2014 Term): **Treasurer** (2014 Term): **Legislative Director** (2014 Term):

Send all nominations to
Malinda Matlock at
mmatlock@piercecouch.com
by **January 1, 2014**

**The Oklahoma Association of Defense Counsel
Board of Directors
and President Malinda Matlock**

Cordially Invite you to attend the

2014 OADC Winter Meeting

Friday, January 24, 2014

The Mayo Hotel

115 West 5th Street
Tulsa, Oklahoma 74103

(Discounted room rates are available directly through the hotel.)

6:30pm Reception

7:00pm Dinner

Please join us for a great evening of fellowship and fun as we honor our outgoing President Malinda Matlock, welcome our incoming President Jennifer Annis, and honor members for their outstanding service.

\$80 per person. Registrations due by January 10, 2014.

Name

Firm Name

Email Address

Phone Number

Additional Attendees: _____ Total # of Attendees X \$80 = _____

Mail completed form and payment to:
OADC c/o: Skoshi Heron • PO Box 5445 • Edmond, Oklahoma 73083
FAX: 405.415.7366

2013 Outstanding Defense Lawyer

Candidate has demonstrated an outstanding commitment to the work of OADC and during 2013 has obtained one or more substantial litigation wins (not necessarily a defense verdict).

Nominations must include:

1. Candidate
2. Candidate's Firm
3. Person Nominating
4. Reason for Nomination

Send all nominations to Malinda Matlock @ mmlatlock@piercecouch.com by **January 1**.

2013 Outstanding Young Lawyer

Candidates for the award must have demonstrated outstanding commitment to the work of OADC and during the 2013 year have one or more of the following:

1. Published Articles
2. Pro Bono Work
3. Work with Law Students
4. Community Service



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