

SAFE HIRING AND RISK MANAGEMENT

by Calvin Bruce, C.P.C., MedCAREERS, and Les Rosen, President, Employment Screening Resources

One of the joys of physician recruitment is seeing a long search culminate in the hiring of a provider who works out well and stays on the job for a long time. On the other hand, a recruiter's ultimate nightmare is to recommend for hiring consideration a physician who does not work out and poses significant risks as a healthcare provider.

Problem hires

Several legal cases well publicized in the mainstream media underscore the importance of thorough background investigation of doctors who provide direct care to patients.

One of the main "wake-up calls" to the healthcare community was the gruesome story of the physician who was convicted for a series of patient murders (including poisoning) after leaving a trail of evidence spanning several decades. Just as shocking was the fact that a number of medical institutions failed to act on apparent knowledge concerning his criminal behavior.

The full chilling account is found in James Stewart's book, *Blind Eye: How the Medical Establishment Let a Doctor Get Away With Murder* (Simon & Schuster, 1999).

More recently, Associated Press posted the story of a Florida man who was convicted for practicing medicine and delivering babies for 17 years without ever attending medical school. He pled guilty to defrauding Medicare, Medicaid and a military healthcare plan. Interestingly, he had practiced medicine with an invalid license obtained after presenting a fake diploma from a foreign medical school.

Unfortunately, these are not isolated incidents. Courtrooms and state medical boards are increasingly becoming venues where unfortunate and often tragic stories of healthcare providers failing to exercise due diligence are played out. Each year, it is estimated that about 2,000 doctors nationwide are the subject of state medical board disciplinary actions on such grounds as gross negligence, incompetence, sexual abuse, moral unfitness, fraud, professional misconduct, practicing while impaired, or failure to disclose a prior state disciplinary action.

Fraudulent claims concerning qualifications and licenses are not uncommon. Just because someone presents himself or herself as a doctor by no means ensures that they are currently licensed, or ever have been licensed. This can happen with individuals who failed to complete medical school, or have foreign training or attended an offshore school, but who have not obtained the required medical licensing in order to practice in the U.S. There is also the problem of doctors continuing to practice even though they have lost their licenses.

Contrary to popular belief, the system for regulating, licensing and disciplining doctors in the United States is considered inadequate in several respects. There is no one place where a

medical organization can turn to get definitive information as to a doctor's background and current status. Medical boards in each state handle discipline, and the procedures are not uniform. Furthermore, many states lack the staff or funding to seriously pursue complaints. Investigations can drag on for years, during which time the doctor can continue to practice and the public may not know a complaint is pending.

In fact, in some states, if a physician voluntarily surrenders his or her license, that "plea bargain" is not reported to the Federation of Medical Boards (the national organization for state medical boards). As a result, the doctor can relocate to another state and establish a new practice—with no one the wiser.

Identifying malpractice actions is also limited. Such crucial information is not revealed in every case through provider investigation with the U.S. Dept. of Health and Human Service National Practitioner Databank.

Responsible recruitment

Clearly, responsible in-house recruiters have a twofold obligation with regard to "safe hiring." A principal obligation is to facilitate the recruitment, hiring and retention of well-qualified practitioners. A related responsibility of staff recruiters is to support the risk management program of the institutions they represent.

These concerns intersect at the point of ensuring thorough employment screening for doctors who are given the hiring nod. This includes careful credentials verification, reference checking, and additional background investigation.

All too often, recruiters recommend candidates who favorably present themselves during a series of on-site interviews and offer "decent" references that check out. When recruiters refer these candidates for hiring consideration, they keep their fingers crossed that ensuing hospital privileging will proceed without any problems.

Unfortunately, standard privileging protocol might inadvertently overlook aspects of a candidate's background that would question, or completely nix, a pending employment offer. Any number of possible "skeletons in the closet" can rule out an otherwise impressive candidate:

- ? A bitter divorce and current, contentious custody battle
- ? Highly questionable business associations
- ? Criminal activity in the distant past
- ? Repeated disciplining that's covered by "qualified" references
- ? Personal conduct indicative of moral turpitude.

These strikeout factors might not show up, for instance, in a report provided by the National Practitioner Databank or in checking out three recent references. Thus, a thought-to-be suitable candidate might turn out to be a highly risky hire.

Using third-party screening agencies

What can staff recruiters do to minimize the likelihood of this worst-case scenario occurring? One course of action is to utilize the services of one or more firms that specialize in employment screening of healthcare practitioners, including physicians.

Companies that comprise this niche in the HR industry can utilize their ability to perform more thorough due diligence than what most hospitals have the personnel and time to accomplish.

There are typically four reasons why a hospital would retain the services of an outside firm to provide pre-employment screening services.

First, there are numerous tasks a hospital can perform in-house, such as verifying professional licenses and contacting past employers. Increasingly, hospital administrators recognize that outsourcing other HR tasks (such as in-depth background investigation) reflects better utilization of their financial and human resources.

Second, it is not practical for a hospital to attempt to perform many of the tasks involved in pre-employment screening due to the highly specialized knowledge and resources required. This would involve learning about the many complicated state and federal laws that govern what employers can and cannot access. Furthermore, the hospital would need to find cost-effective sources of information, such as criminal checks, which can be quite involved and time-consuming.

Third, by outsourcing these tasks, hospitals enjoy the protection of the federal laws governing background screening by outside agencies, as covered by the Fair Credit Reporting Act (FCRA). This law governs the activities of third-party agencies involved in employment matters. By following this law, both employers and applicants enjoy significant legal protection.

Specifically, if a hospital performs these services in-house, care must be taken to not unduly invade an applicant's privacy. According to FCRA guidelines, hospitals must disclose to applicants that employment screening is being conducted. Also, they must obtain written consent and give applicants an opportunity to correct any information before it is used as a basis to not hire.

Fourth, there is another privacy issue to consider. In terms of the kind of corporate culture most hospitals wish to establish, it raises concerns for employees to know that other hospital staff have conducted extensive investigations into their backgrounds.

Job applicants understand that background screening is a necessary business practice, but many feel better if others in the same organization are not doing the investigation. After all, why should an applicant's first contact with the HR Department be a background screening?

Cautionary advice

There are scores of companies that offer similar employment prescreening services. Some cautionary advice is in order when comparing competitor firms.

A hospital should look for a professional partner, and not just an information vender selling data at the lowest price. Administrators should apply the same criteria they use in selecting any other provider of critical professional services. For example, if a hospital were choosing a law firm, it would be important to know that the law firm is competent, experienced, knowledgeable and reputable—as well as reasonably priced.

These same criteria are applicable when selecting a background-screening partner. It is fitting to ask the potential partner to explain their services in terms of:

- ? Expertise of the parties providing the service
- ? Legal compliance at every stage of employment prescreening
- ? Training of in-house staff and ongoing consultation availability
- ? Familiarity with the healthcare staffing industry
- ? Competitive pricing
- ? Performance guarantee in writing.

Following these guidelines, hospital administrators or HR managers can make a more informed decision on whether to outsource pre-employment screening services and, if so, determine which service provider to utilize.

Advice for recruiters

Admittedly, physician recruiters don't set hospital policy concerning the use of professional services vendors. Nevertheless, those who recognize the importance of safe hiring as congruent with a hospital's overall risk management program may do well to recommend at least preliminary discussion with one or more firms that specialize in pre-employment screening.

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efforts to continue membership and growth, and increase visibility and inform physicians about ASPR. We are working on improving our web site.

Please be sure to mark your calendar for the ASPR Annual Conference on August 19-20, 2001 at the Marriott Hotel in downtown Minneapolis, Minnesota. There will be more information about this conference in upcoming newsletters and on the web site.

Best wishes with your recruitment efforts, and remember Father Nick's advice--always take time to play and have fun with whatever you do, including work. ✍