

Social Media and Background Checks
Dangerous or Due Diligence for Your Practice?®

By Lisa Bell, M.Ed. and Charlotte Lacroix DVM, JD
Veterinary Business Advisors, Inc.
www.veterinarybusinessadvisors.com

The internet and social media networks are powerful business tools. An increasing number of Practices are using them to promote and market their brand and facilitate the recruiting process by checking applicants' and employees' backgrounds. The controversy surrounding the use of the internet and social media networks continues to cause angst for employers. This article focuses on Background Checks, which are essential human resource tools to protect the Practice and ensure a safe, secure workplace. The challenges in using this tool are how to perform them and avoid allegations of discrimination, defamation and invasion of privacy.

Why should you, as a Practice owner conduct a background check or employment screening on potential or current staff members? :

- The Practice has a legal duty to exercise due diligence in hiring and managing its employees and could be held responsible for 'negligent hiring' or 'failure to warn' should an employee turn violent on the job. 'Negligent hiring' lawsuits are on the rise.
- False or inflated information (resume fraud) could be supplied by applicants. Statistics indicate that 43% of those seeking employment misrepresent information on their resumes or applications. Background Checks help confirm information or uncover embellished/outright falsehoods regarding experience and/or credentials.
- Heightened security and identity verification strategies. Background checks confirm personal information.
- Arrest information and criminal history background checks. Past conduct indicates that a person's behavior may present a risk to your Practice or staff.
- An individual's readily available personal and professional information on the internet could indicate that person's suitability for your Practice's culture.

Who should perform the background check? Should you be the one performing this function instead of outsourcing to a professional background screening company? Should the Practice be augmenting the outsourced process with Internet searches by using professional sites (LinkedIn, member/professional association/organization sites), Search Engines (Google, Yahoo), Social Networking sites (Facebook, MySpace, Twitter, Classmates, Virtual worlds) or Rant sites (Jobvent, Fthisjob)?

If you plan to use background screening as a formal requirement of the hiring process, what will the policy and process look like for your Practice to ensure reliable, consistent and predictable use of the tool? The process of obtaining and using the background check information in

employment decisions needs to be legally defensible and managed appropriately to mitigate the risk of exposing the Practice to liability.

Practices should create a policy that outlines procedurally how the process will work for 1) identifying applicants (those that submit resumes and those that you seek out), 2) applicants who have received a conditional job offer, and 3) screening current employees. Some points to include:

- Clearly inform applicants and employees that the Practice routinely performs background screenings or performs other research by reviewing the individual's online presence and let the individual know of the specific items you will be reviewing.
 - For job applicants, ideally, a search should be performed after a conditional job offer has been extended, accepted and consent obtained. It is preferable to perform the search after a conditional job offer has been extended because it minimizes the risks associated with allegations of discrimination, defamation and invasion of privacy. Alternatively, prior to making a job offer, the Practice can obtain the applicant's consent to the background check as part of completing the job application. Sample consent language could read: "As part of the Practice's review of your application, the Practice may view and/or access publicly available information about you, including information publicly available on the Internet, that is job-related and consistent with the merit system principles and prohibited human resources procedures of the Practice. No information from any source may be used to discriminate for or against a applicant based on race, color, national origin, gender, age, political affiliation, religion, disability, marital status, sexual orientation, gender identity, genetic information, status as a parent, membership or non-membership in an employee organization". Note, however, that a credit background check performed on an applicant requires both a notification and consent form that complies with the Fair Credit Reporting Act.
 - For employees, your Employee Manual should clearly articulate the Practice's policies regarding employee communications using blogs, Facebook, MySpace, Twitter, etc.
- Ensure that each position has a written, detailed job description that accurately reflects the position.
- Document criteria that will provide consistency and predictability. Agree upon a standard by which employment consideration may be altered based on findings, especially to support a decision impacting whether or not the applicant is hired.
- When using the internet to search information on applicants, ensure the process is not violating any federal and/or state discrimination laws. Only factors that are valid predictors of job performance should be considered, taking into account the knowledge, skills and abilities required for the position.

- Stay away from creating a false alias or providing false information in order to gain access to an applicant's or employee's online profile.
- Do not ask for user name, id or password to gain access to an applicant's or employee's online profile.
- Do not indirectly do what would be improper or illegal to do directly. Don't search information that employers are not legally permitted to explore.
- Do not pick and choose among applicants - internet searches should be done consistently.
- The source of information from the internet needs to be verified – it could have been maliciously placed. Make an effort to verify and give the individual an opportunity to confirm or deny it.
- Retain search information – all permissible information on which you based your employment decision and all search criteria.
- Have your policy reviewed by your Practice's legal counsel.

In order to protect your Practice, when performing background checks, plan carefully and thoroughly to optimize your use of the internet and social media networks, while taking steps to avoid or minimize problems that may arise later. One fact remains: the Practice's hiring policies need to support the Practice's ethical standards and business goals.