

On The Record . . .

Official Newsletter of BERTOLINO LLP

September 2021



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Baseless and False Allegations of Inappropriate Teacher-Student Relationships: What is an Educator to do?

It's that time again. School is back in session. And during this school year, the Texas Education Agency (TEA) will likely be working overtime to investigate the many complaints it receives about our state's certified educators. Believe it or not, one of the most common complaint of misconduct that TEA receives are allegations of inappropriate teacher-student relationships, which also include inappropriate communication with students. Although most of the complaints filed against educators for alleged inappropriate teacher-student relationships are valid, there are times when the allegations are baseless and false.

Although quite rare, false allegations of improper relationships between teachers and students do happen. I have seen it many times in my practice. These falsehoods can spring from any number of various misinterpretations of events or facts, or from (in an even rarer event) a student's purposeful and intentional maliciousness. But whatever the reason for an allegation, parents are naturally likely to side with their children. Really, what sort of people would they be if they didn't?

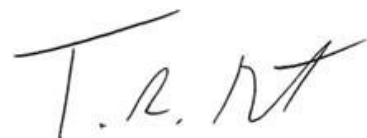
All of this makes for a stressful and unfair occurrence to the falsely accused teacher, and one that can have ramifications on the teacher's livelihood (and life) for years to come. A complaint of this sort tends to make its way through a school's rumor

mill like fire through a dead woodlot. And the woodlot embers can further linger in the aftermath in the form of a teacher's termination of employment, wide public humiliation on social media platforms, and destructive harm to a teacher's personal finances. Therefore, a falsely accused teacher must do everything he or she can to confront such livelihood-threatening allegations and to deal with them as quickly and decisively as possible.

The sad fact is that even when prosecutors do not pursue criminal charges (or worse, when police officers refuse to make an arrest), and the matter is otherwise deemed frivolous or baseless, TEA is still willing to strip a teaching certification with relatively little compunction. TEA and their investigators exist for the protection of the public, after all, and not for the benefit of teachers. I express that to my clients all the time. This means TEA tends to favor the investigation of such baseless complaints over their dismissal, and the veracity of allegations over their potential falsehood.

Once TEA receives a complaint about educator misconduct, it reviews the complaint to determine whether the alleged behavior falls under its jurisdiction to investigate, or if it contains enough information to decide whether what is alleged would violate Texas law, if true. A complaint of alleged improper teaching relationship (or inappropriate communication) is likely to meet these criteria. More's the trouble for the falsely accused teacher. It is therefore imperative that a certified educator, falsely accused of an improper relationship with a student, contact a skilled license defense attorney immediately.

-Tony R. Bertolino, Managing Partner

A handwritten signature in black ink, appearing to read "T.R. Bertolino". The signature is stylized and written in a cursive-like font.

Spotlight: Marcus Wennrich



This month, we would like to recognize Marcus Wennrich and congratulate him for one year of service with Bertolino Law Firm. Usually found behind the camera and behind the scenes, we thought it fitting to shine the spotlight on Marcus for a change. Focus in on these fun facts about our Marketing Coordinator.

My nickname at work: I work remotely so I am not sure about this one, ask Bruce.

I am skilled at: Drone flying, photography, hiking, traveling, SEO, marketing and explaining things as lengthy as possible.

On the weekends and in my free time I am often: Volunteering with Team Rubicon, hiking, camping, photography and flying my drone.

Number one on my bucket list: Taking my girlfriend to Capitol Reef National Park to marry her. After that it will be hiking Rim-to-Rim North Kaibab to Grand Canyon Village.

The best sweet or salty snack: Nussecken

Best movie ever: Das Boot

My favorite candy: Peppermint Patties (frozen)

My favorite sports team: FC Koeln

If I had a theme song that played every time I walk into the office it would be: "Intro" by The XX

People say I look like: I was told I look Russian, Australian, and a park ranger.

The best part of my job: The freedom to work remotely and that my input and work is highly valued.

[Learn more about Marcus here](#)



THE VETERANS DAY 5K



THE VETERANS DAY 5K



[Click here to register for the 5th Annual Veteran's Day 5K to benefit Toys for Tots](#)



Whether you're a seasoned runner or you want to support a good cause, or perhaps both; sign up for the Veteran's Day 5K on Saturday, November 13th from 7:00AM - 11:00AM. Bring a donation or two for Toys for Tots, support local vendors, and enjoy a walk or run in beautiful Fritz Park.



THE VETERANS DAY 5K



THE VETERANS DAY 5K



Hallmark Achievements



Texas Medical Board v. M.G.

Facts: Our client M.G., faced a complaint by the Texas Medical Board ("TMB") regarding adverse peer review, failure to meet the standard of care and problematic practices regarding professionalism and behavior towards hospital staff. M.G. had 14 patient cases where TMB felt she had violated the code. TMB alleged that she was a danger to her patients and the public and recommended sanctions and an evaluation.

Outcome: After TMB's investigation, an informal settlement conference was held. Bertolino LLP presented evidence in the form of an expert report, by a 3rd party expert, who disagreed with TMB's initial findings that M.G. fell below the standard of care. They further argued that her behavioral violations were insignificant based on her 20-year career as a physician. Based on their arguments, TMB offered M.G. a non-disciplinary plan. This meant that her matter was essentially dismissed and would not result in disciplinary action by TMB so long as she completed the plan.

Texas Board of Nursing v. B.J.

Facts: Our client B.J., had a prior Texas Board of Nursing ("BON") board order from 2016 that she was unable to successfully complete. She was effectively made un-



hirable by the order and could not complete the remaining employment conditions cited in the order. Ultimately this left B.J. with a board order, forever over her head, with no ability to comply with the conditions. B.J. was no longer even in the field of nursing she needed to be in, in order to complete the order.

Outcome: Bertolino LLP initiated this matter and was able to get B.J.'s matter on the docket to be heard before the BON. They argued that her order was ripe for modification of conditions in order to allow her to complete the order and put this matter to rest. They argued that her employment conditions must be modified as how they stood, made her un-hirable. They argued that her current employment should count towards the condition and enable her to close out her order. They argued she was not a danger or a risk to the public and the current conditions were not meant to effectively suspend her license. After arguments, BON agreed and modified the order.

Client Survey: Your Opinion Matters

Bertolino LLP strives to be a 100% client-centered law firm. Running a client-centered law firm means putting our clients at the center of our thinking. This goes beyond the legal deliverables the Firm will provide: Being client-centered means truly putting ourselves in our client's shoes and looking at the experience of hiring an attorney and going through a legal matter from our client's point of view.

Each month, we will pose a quick, client-focused survey in this section of our newsletter. We asked our clients to please assist us by taking this survey, as your feedback is essential in our on-going efforts to deliver an amazing client experience.

-Sheri L. Middlemas,
Chief Operating Officer

In regards to general case updates, what is your preferred method of communication?

Phone: I like the human connection

Select

Text: A quick glance to access the information is all I need

Select

Email: I don't need to talk but I want all the details

Select

Thank you!

Side Bar ...

**Determining Potential New Client Qualifications:
Employment Law or Occupational/Professional License**

Defense?

As the Client Relations Coordinator for the Bertolino Law Firm, one of the most rewarding aspects of my job is conducting initial consultations with potential new clients (PNC). Of course, during these consultations, I explain that I am not a licensed attorney, and I cannot extend legal advice. Instead, my primary job is to “sell” legal services and to work in close liaison with a newly on-boarded client.



Generally, with the guidance of one of our licensed attorneys, it is also my responsibility to quickly determine if a PNC is a “qualified lead” and if our law firm can help. For example, if a PNC wants to hire a divorce, immigration, or a criminal law attorney, then the PNC is clearly unqualified because our law firm exclusively represents occupational/professional license holders. But sometimes the qualification of a lead is unclear, and because I am not a licensed attorney, I am not permitted to make legal assessments about a prospective case matter. Instead, I am required to use a written criteria prepared by our law firm’s Managing Partner and Director of Legal Services, Tony R. Bertolino. I’m also required to coordinate with one of our licensed attorneys when assessing the qualification of a lead.

As a non-attorney salesperson for the law firm, a common situation I face when initially speaking to PNCs is determining if their case matter falls under the category of employment law or professional license defense. As discussed above, I am clearly able to determine whether our law firm is equipped to help a PNC when a PNC is looking to hire a criminal defense attorney or divorce lawyer or immigration lawyer. In short, the lead is unqualified, so we quickly refer them to other Texas attorneys who specialize in practicing in those areas of law. However, employment law and occupational professional license defense law tend to overlap, and this creates a very “gray area” that requires the input of one of our licensed attorneys to assess the leads qualifications. There is a fine line between employment law and professional license defense law and often one tends to lead to the other. If a PNC mentions that they have a scheduled meeting with an office supervisor or with the human resources department where they are employed, these are facts indicating the PNC matter may be considered employment law and that is then communicated to one of our attorneys. However, if they have been contacted by a licensing agency and/or notified of a complaint or an investigation for alleged misconduct, this would be an indicator that it is a professional license defense matter. Of course, every situation and case matter is unique, but this is often a quick way for our attorneys to determine if a matter requires assistance through an employment law attorney or if it requires the services of a professional license defense attorney.

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