

On The Record . . .

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Do I Have to Contact My Licensing Board If I am Ever Arrested?

by Tony Bertolino, Managing Partner

If you were arrested and hold a professional, medical, or vocational license, your license or certification might be at risk. In some cases, you are required to notify your licensing board of an arrest, charge, indictment, or criminal conviction. However, you should never assume that you are required or are not required to report an address. Making either one of these assumptions could cause more harm than good.



Licensing Boards May Follow Different Rules and Laws

Each Texas licensing board or regulatory agency has its own set of rules, regulations, and laws that you must follow to maintain your license or certification. Therefore, it is essential that you understand the potential effects of an arrest on your license and whether you are required to report your arrest to your licensing agency proactively.

The effects of an arrest on your occupational license or certification may vary widely. Still, in some cases, it could result in disciplinary action against your license, even resulting in the permanent loss of your license. For some professions, arrests or criminal charges are sufficient to make you unsuitable to hold a license, whether you are convicted of a crime or not. In other cases, whether you are convicted can make a difference in the

outcome of your disciplinary proceedings. Even where your licensing agency does not automatically bar individuals with arrests from holding licenses, it may consider your moral character and fitness as a factor in determining whether you can continue to hold a license.

The Type, Severity, and Frequency of Arrests Matter

The type and severity of the criminal charges underlying your arrest can also impact whether you receive sanctions from your licensing board. Your previous criminal history also may be a factor in this determination. For example, an arrest for a minor traffic crime would be far less problematic than an arrest for embezzling from your employer or from assaulting a police officer.

Your previous history also can affect the outcome of any disciplinary proceedings concerning your license. For instance, if you are arrested for a minor alcohol-related crime and have no prior criminal history, you may not even face any disciplinary action. However, if you have been arrested for your third DWI in three years, you may be in greater danger of a suspension or revocation of your license, depending on your situation.

Get the Advice You Need About Maintaining Your Occupational License

Getting arrested is scary, even for a minor criminal offense. You could face unwanted repercussions that impact you not only personally but professionally. You need to be aware of your reporting requirements to the agency that regulates your license or certificate and how that report will impact your ability to maintain that license.

Hallmark Achievements

Texas Department of Licensing & Regulation v. PM

Facts: PM is an HVAC contractor who received a complaint letter and a settlement offer from the Texas



Department of Licensing and Regulation. Homeowner Complainant's HVAC system was installed by another contractor seven years before and PM was hired to do repairs. The compressor was still under warranty and PM took it back to the manufacturer, swapped it out and installed it.

Complainant claimed that PM had installed an incompatible unit and demanded \$8,000 to have it replaced by a different company. PM countered that he would install another system at his cost, but Complainant refused to allow PM's company back on his property and filed a complaint with TDLR.

Outcome: TDLR's HVAC expert reported that the new outside unit that PM's company installed was incompatible with the inside air handler based on the information from the replacement HVAC service company. Bertolino Law Firm provided TDLR's HVAC expert the information that showed that the replacement unit was swapped out with the manufacturer and it was compatible. The expert disagreed because he was comparing specifications on a 2013 unit with what was available in 2019 and there were some slight differences. TDLR wanted PM to pay the Complainant money to replace the unit in order to close the case, but he refused. Finally, the firm obtained all of the specifications from the manufacturer that showed they were compatible and had someone at the manufacturer to the TDLR expert to convince him that they were compatible. After speaking with the manufacturer, the TDLR expert reversed his opinion that there was a violation of the regulations and TDLR dismissed the case.

Texas Medical Board v. AU

Facts: AU was a licensed physician until he signed an order suspending his medical license in December of 2020. Prior to signing the order, AU was investigated by TMB for several incidents of misconduct, two of which resulted in AU's arrest. The order suspended AU's license until his treating physicians could advise that he was able to safely practice medicine again. After a year of compliance with the order, AU requested that the suspension be terminated.



Outcome: During an Informal Conference, Bertolino Law Firm submitted evidence of AU's regained ability to safely practice. They submitted his compliance reports, his proof of employment, community service hours, and a letter from his treating physician stating that he was ready to reenter the field of medicine. Further, Bertolino Law Firm provided argument detailing the results of his criminal matters. After the conference the Board decided to grant the request and terminated the suspension pending AU's educational evaluation with an internal program.

When One Case Becomes Three: The Relationship
Between Your Regulatory Matter, Civil Lawsuits and
Criminal Charges

Someone may initiate a civil or criminal matter *in addition* to your pending regulatory matter. This is commonly referred to as a parallel proceeding and it is more common than people realize. While it covers the same basic facts, it's a completely different proceeding apart from your regulatory matter. Remember there are three main case types:



- Civil matters -- people file lawsuits and seek money damages for claims of wrongdoing.
- Regulatory matters -- someone files a complaint against you with your government licensing agency and you must respond to protect your license; and,
- Criminal matters -- the government asserts someone has committed a crime and must prove that beyond a reasonable doubt in court.

During my time as a state regulator, I saw many instances where people with a complaint were also embroiled in civil or criminal matters. In fact, I've seen matters where all three occurred simultaneously.

How Might my Regulatory Matter Lead to a Civil or Criminal Matter?

The Nature of the Allegations

The type of claims in your regulatory complaint impacts the potential for separate civil or criminal cases. If the regulatory complaint matter involves allegations of fraud, ethics violations or deliberate misconduct, it could be investigated and prosecuted by the government. If the claims are merely that you made a technical / unintentional violation, or violated a standard of practice or care, it likely does not implicate a criminal matter. Criminal cases are usually limited to knowing / intentional violations. Claims of fraud, ethics violations or deliberate misconduct can be brought in a civil lawsuit, and people may also pursue claims for unintentionally violating professional standards. These are sometimes known as professional malpractice or negligence lawsuits.

The Impact

The other factor influencing the prospect of a civil or criminal case developing is the impact on people. For example, are there allegations you physically harmed someone? Are there claims you caused a financial loss? The presence of both accusations increases the likelihood of a civil or criminal case being initiated.

The People Involved

Another important element is who is involved and aware of the regulatory complaint matter.

If a government agency in addition to your regulator is aware of the allegations, it may prompt them to consider filing a civil suit. For example, the Texas Attorney General may file a civil lawsuit against a licensed professional or business being pursued by their state regulator. The United States Attorneys offices have attorneys who pursue civil lawsuits when there are substantiated allegations of civil violations or financial loss to the government. Likewise, if a private corporation or business entity is involved, the business may choose to pursue a civil suit to recoup claimed financial losses.

Sometimes people involved in the regulatory complaint will have a law enforcement acquaintance or family member and chose to make a criminal complaint after talking with that person. There are also government task forces, working groups and liaison functions where regulators share information with law enforcement about violations that might involve a crime. For example, amidst the 2007-2008 financial crisis, the Texas legislature created a Residential Mortgage Fraud Task Force to explore regulatory violations that may be criminal. A variety of real estate and financial regulators were a part of that task force. Also, many state and federal agencies have an office of inspector general tasked with looking for fraud, waste and abuse and making criminal referrals. In fact, many government agencies and some private individuals have a legal duty to report violations of the law they believe are criminal.

Protect Yourself by Hiring Legal Counsel and Communicating with Your Lawyer

Hiring a knowledgeable law firm with skilled attorneys to represent you in your license defense matter is key to limiting your exposure to additional civil or criminal claims. Bertolino LLP has experience dealing with parallel proceedings and knows how to navigate the complex legal connections between your regulatory matter and the risk of a civil or criminal matter. Knowing who to talk to, what to say or not say, and how to resolve your case to minimize your exposure to these additional proceedings is crucial. The last thing you want is to complete your regulatory matter only to now be facing a civil lawsuit or criminal investigation for the same situation. For this reason, if you know of a separate civil suit or criminal investigation related to your regulatory matter, its critical that you make your attorney aware of this information so your legal interests can be protected.

Client Survey: Your Opinion Matters

Bertolino LLP strives to be a 100% client-centered law firm. Each month, we 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.

How many other law firms did you contact prior to retaining Bertolino LLP?

Contacted 1-5 other law firms before retaining Bertolino LLP

Select

Contacted 6 or more law firms before retaining Bertolino LLP

Select

None - Bertolino LLP was my first call and I looked no further

Select

Side Bar ...

Bertolino LLP has established a \$2,500 academic-based scholarship to be awarded to a deserving student who is pursuing higher education at an accredited college/university or graduate school. Students from all areas of study are invited to participate. Submissions will be accepted starting in June 2022, watch future newsletters or visit our [website](#) for more information.



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