

On The Record . . .

Official Newsletter of BERTOLINO LLP

January 2022



[Click here to share with a friend or colleague](#)

Our Firm

Tony R. Bertolino, Esq.
Managing Partner

Sheri L. Middlemas
Chief Operating Officer

Troy Beaulieu, Esq.
Director of Legal Services

Frank A. King, Esq.
Senior Associate Attorney

Kerry J. Bloodsaw, Esq.
Associate Attorney

Penny Smith
Certified Paralegal

London de la Teja
Accounts Receivable Manager

Bruce Kingsley
Client Relations Coordinator

Melissa Caffery
Legal Assistant

Marcus Wennrich
Marketing Coordinator

Ten (10) Things To Know When Your Licensing Board is Investigating You

by Tony Bertolino, Managing Partner

I have been practicing law and defending professional and occupational licenses in Texas for almost 20 years. And during my many years in practice, I have noticed ten (10) general things that a license holder must know when dealing with a Board investigation. Under Texas law, licensing boards and regulatory agencies must administer complaints filed against their licensees and they are required by statute to investigate filed complaints. So, before I start, please don't be misled in believing that you are immune from the process. If your profession requires a license to do your job, then it is very possible for a complaint to be lodged against you at some time during your career. The longer you practice in your respective licensed profession, the more likely you will face a Board investigation. It's just a matter of time.



So, while my list is not exhaustive, the following are my 10 important things to know if your license is ever under attack:

#1 Right to Counsel. You have the right to counsel during the entire complaint and investigation process. As soon as you are notified of a complaint filed with your licensing Board, you should consult with a professional license defense attorney immediately.

#2 Initial Response. Your initial response to the Board is critical. It is not

uncommon that a complaint is dismissed outright after the Board investigator receives a thorough and well-planned response to its initial inquiry.

#3 Face the Allegation. It is important to face the allegations head-on. Even if you believe the complaint is baseless, it is important to take it seriously. Even if you feel confident that the investigation will yield nothing, it is critical to mount an effective defense from the very start.

#4 Respond to the Board. Timely respond to *all* requests from the Board. Failure to respond to complaint allegations or other Board requests can lead to additional penalties or sanctions you would otherwise avoid if you timely responded to all requests.

#5 Cautiously... Respond to the Board. Anything you say or send to the Board can be used against you as evidence. So do not contact the Board directly and try to talk your way out of the complaint. You may inadvertently make omissions of guilt or give the investigator information that could harm your case.

#6 Keep Your Mouth Shut. Under Texas law, only communications with your attorney are protected by the attorney-client privilege. So do not talk with colleagues, bosses, clients, or anyone else about the Board complaint. Such communications are not protected, and those people can be subpoenaed to testify about what you said.

#7 The Enforcement Division is not Your Friend. The function of every Texas licensing Board is to protect the public, not your interest or your license.

#8 The Process can be Complex. Each Texas licensing Board handles complaints in their own way, which is spelled out in their rules and in state law. Board enforcement procedures can be complex and difficult to navigate. Your professional license defense attorney can help you navigate the process.

#9 Be Honest. Do not alter, destroy, or attempt to hide evidence. Do not lie to the Board. Texas licensing boards are staffed with good attorneys and investigators who know how to do their jobs. You do not want to get caught lying or hiding evidence because that will make your situation and any disciplinary actions you will have to face significantly worse.

#10 Hire a Lawyer. This may sound repetitious from item number one above, but it deserves repeating. You have a right to counsel. And hiring a license defense attorney does not make you look guilty. In fact, it shows the board that you are serious about addressing the complaint and defending yourself. So, lawyer up!



Spotlight: Frank King, Esq.

We would like to kick-off the new year with a special shout-out to attorney Frank King and offer our sincerest appreciation for his two years of service with Bertolino Law Firm. Enjoy these fun facts about our Senior Associate.

My nickname at work: "Swankie Frankie"

I am skilled at: Taking things to the ridiculous extreme

On the weekends and in my free time I am often: Taking tours of wineries in the Hill Country and elsewhere

Number one on my bucket list: Going to Patagonia and staying at the Mendoza Winery, then hopping over to the Galapagos Islands

The best sweet or salty snack: Bourbon-and-butter-roasted pecans

Best movie ever: The Big Lebowski

My favorite candy: Dark-chocolate-covered caramel

My favorite sports teams: UT Longhorns

If I had a theme song that played every time I walk into the office it would be: "Get Up, Stand Up" or "I'm Still Standing"

People say I look like: Patrick Swayze

The best part of my job: The immense outpouring of gratitude from my client when I obtain a great result for them

Hallmark Achievements

Texas Department of Licensing & Regulation v. RF

Facts: Client RF is a masseuse with over 30 years-experience with no complaints or discipline against him. A customer filed a complaint against RF with TDLR for massaging him with his shirt off and for inappropriate touching.



Outcome: After confronting the Complainant with the facts that he filed his complaint over three weeks after the massage took place and for referring another customer to Client by saying he "loved" the massage, Complainant decided he did not want to pursue the complaint after all, and refused to testify on behalf of TDLR. TDLR issued a warning letter to RF to refrain from massaging clients topless in the future, but no other discipline was issued.

Texas Board of Nursing v. MN

Facts: Our client, MN reported herself to the board after she was arrested and charged with felony possession of a controlled substances. MN was given a bond and released a few days later.



Outcome: Bertolino LLP reported her arrest and detailed the facts and circumstances surrounding the incident. Bertolino LLP provided evidence regarding the reasons for the arrest and the subsequent procedural posture. After further investigation, the board determined that no sanction was required.

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.

Clio for Clients is a portal used by Bertolino attorneys and all firm staff to communicate with our clients. Using the *Clio for Clients* mobile app or web browser, we can easily collaborate with clients, send documents, and share key details like status updates that clients can access at their convenience. Clients benefit by using *Clio for Clients* to easily scan and share documents, access their case details in a central spot, and message or chat their attorney and

others at the firm.

Which Clio for Clients functions would you like to learn more about?

Scanning/sending documents to attorney and legal team

Select

Securely accessing case information

Select

Sending text messages to firm staff

Select

Setting up a quick tutorial for general working knowledge

Select



Make a Good First Impression with Your Regulator: An Insider's Perspective

Part Two of a Two-Part Series by Troy Beaulieu, Esq.

During my time in state government, I saw a lot of different professional license complaints come across my desk. Two constants that stand out are: (1) the impact records management has on complaint outcomes; (2) the impact that good legal representation has on case resolutions. These are the two most significant actions a licensed professional can take to improve the outcome of a complaint. A professional's records management practices are key to your ability to defend against complaints. Equally important, is having a solid advocate who knows the administrative law process fighting in your corner. While it can be a costly expense, it is money well spent when comparing outcomes between license holders who have legal representation and those who do not. If you do nothing else, practicing good records maintenance, and hiring solid legal counsel will go a long way to minimizing your risk.

MAINTAIN YOUR RECORDS

Solid Records Management Practices Help Protect Against Claims of Wrongdoing

Many times, when I was a regulator, I determined a complaint lacked merit. However, due to poor records management, my staff had to investigate in more depth before discovering the allegations were false. Make the investment up front in solid records retention, management, and maintenance best practices consistent with your regulator's requirements. This will help when an issue does arise.

Agency staff are thrilled when they see well-maintained and organized files with the required information. Conversely, records that were missing, incomplete, haphazardly pulled together or created after the fact suggest your practices may not comply, regardless of the underlying allegations. Many

regulators require license holders to maintain records for a specific period and make them available upon request. Failing to have the records or provide them timely could result in disciplinary action, even if the underlying complaint lacks merit. Many times, the action taken by state licensing agencies hinges on the absence of an adequate work file or the license holder's inability to demonstrate they have met their professional obligations. This is especially true since time may have lapsed between when the complaint is filed and when the allegations occurred.

Investing in Digital Records Management Makes Maintaining and Sharing Records Much Easier

I strongly urge people to invest in a digitized records management approach. Being able to share your files with regulators or your attorney via the Cloud or other digital media is easier than mailing hard copy documentation or having to scan it all. It will make applying for a license or responding to a complaint much easier. When creating a digital records plan, include regular data backups to the Cloud or some other source in case your personal computer crashes. This avoids you having to tell your regulator you lost your files, which may be a potential violation of the law.

RECOGNIZE WHEN YOU NEED AN ATTORNEY AND DO NOT DELAY SEEKING LEGAL COUNSEL

Unfortunately, people do receive complaints or face problems when applying, renewing, or upgrading their license. The timing for responding to these matters can be very critical and escalate quickly. That's why you must not ignore the problem or delay action. It's essential to immediately seek solid legal counsel from an attorney experienced with the unique aspects of administrative law and dealing with state agencies. Fortunately, this is exactly the type of law that we practice at Bertolino LLP.

While a complaint may seem straightforward because it relates to your profession, there is a huge body law impacting your case. Sometimes cases are resolved based on legal reasons and your professional practice never need be addressed. You do not want to miss valuable opportunities a trained lawyer can spot. It may be tempting to save money by responding on your own, but hiring a lawyer is not something to skimp on with your livelihood at stake. Bertolino LLP focuses on protecting your professional license and defending aggressively when your livelihood is under attack.

Side Bar ...

How to Greatly Save Money on Legal Fees and Expenses at Bertolino LLP

by London de le Teja, AR Manager

Are you finding yourself under investigation by a

Keep your attorney updated.

Nothing is more of a waste of time then to draft a document, set a hearing or preparing for any meeting without all the facts. It's very important to be up front, and honest from the start. We are here to work



Board and need to hire an attorney? Are you worried about funding your case? Are you looking for ways to cut back on costs and keep your invoices manageable?

After eight years of experience in law firm accounts receivable, I have some important tips to share. If you read and follow the tips below, you could greatly reduce your legal fees and expenses.

Additional Communications.

As hard as it might be sometimes, it's important to understand when you need to communicate to your legal team. By limiting excessive calls and e-mails, it can greatly reduce your fees. The legal team is here to work for you, so if there are new developments or any work that needs to be communicated, we will do so. Limit your calls and texts by writing down all your questions prior to calling so you don't forget anything. Send one e-mail instead of several with all your attachments and information, instead of several e-mails.

Ask how you can help.

Communicate to your attorney and legal team about things you can do to contribute to lowering costs. Let them know that you are available to handle certain tasks yourself instead of the legal team doing it for you. (i.e., picking up documents, scanning and sending documents, communicating to some third parties, assist with preparing responses, etc.) The more you can do, the better.

Respond to your attorney promptly.

Your attorney can work much more efficiently when he or she gets the answers they need without needing to

for YOU!

Understand your attorney's billable hours.

Understanding how your attorney bills and what is considered "billable" will help you plan your communication and how to action things during your case matter.

Communicate with the correct support staff.

If you are needing to ask a question or inquire about something that is a non-legal matter, like asking about your account, or if we have your correct information on file, make sure you know who to reach out to, rather than using your attorney's time.

Prepare your documents correctly.

As soon as you have engaged our law firm, you should deliver all documents to us immediately. It's important for us to have all information related to your case matter on hand. Also, consider how you're sending it and make sure it can be accessed. If not, your lawyer and the legal support staff will have to use their valuable time trying to work with you to get these documents.

Avoid venting to your attorney.

Venting is sometimes needed, and we understand that. We know most of the time you might be in a very stressful situation. But since your attorney must bill for the time he or she is spending, we want to make sure the time is used to better your case matter.

As always, our staff is here for you. Always feel free to reach out to us so we can guide you in the right direction!

spend additional time following up
with you.

[Contact Us](#)

[Visit Our Website](#)

BERTOLINO LLP | (512) 476-5757 | 3101 Bee Cave Road, Suite 270, Austin, TX 78746
www.bertolinolaw.com | info@bertolinolaw.com