

# On The Record . . .

Official Newsletter of BERTOLINO LLP

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## What Happens to My Professional License if I Get a DWI?

by Tony Bertolino, Managing Partner

The effects of a DWI on your professional or occupational license varies according to your profession, whether you have a history of DWI or similar criminal offenses and other relevant factors. In some cases, you may need to proactively report your DWI arrest to the board or commission of the agency that regulates and licenses your profession. In other cases, you will need to disclose the arrest or conviction only when you renew your license.



Ultimately, you will have to confront the issue with the state agency that regulates your profession. Therefore, you should be aware of the potential impact of a DWI on your license. Some state agencies provide specific penalties for a DWI arrest or conviction, whereas others base the extent and the severity of the sanctions on the overall circumstances. When you are in this situation, our experienced license defense attorneys can assist you and help guide you through any disciplinary proceedings.

## DWIs and Your Medical License

The Texas Medical Practice Act, the Physician Assistant Act, and the Acupuncture Act authorize the Texas Medical Board to take disciplinary action against license holders for convictions, deferred adjudication, community supervision, or deferred disposition for

any felony. Although DWIs typically are misdemeanor offenses, there are circumstances in which a DWI can become a felony under state law.

For example, you could face a felony DWI charge if you have a certain number of previous DWI convictions. You also could face felony DWI charges if you have a minor passenger under the age of 15 with you when you are arrested for DWI or if you cause an accident that injures another person while you are driving while intoxicated.

### **DWIs and Your Nursing License**

The Texas Board of Nursing (BON) issues Disciplinary Guidelines for Criminal Conduct. These Guidelines specifically include crimes involving drugs and alcohol and are crimes that are highly relevant to a nurse's fitness to practice. As a result, a DWI could be a basis for disciplinary action against a nurse.

### **DWIs and Your Teaching Certificate**

The State Board for Educator Certification (SBEC) advises that it may discipline educators who commit two or more crimes that occur within 12 months that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct. While a one-time DWI may not lead to disciplinary action, repeated offenses, or offenses involving alcohol that are potentially harmful to minors, likely will lead to disciplinary action. Likewise, if a DWI occurred in connection with a school event or on school property, you may be more likely to face sanctions by the SBEC.

### **DWIs and Your Law Enforcement Certification**

Under Texas law, the Texas Commission on Law Enforcement must suspend the license of a law enforcement officer who is charged with a felony and placed on community supervision for 30 year. As a result, a felony DWI conviction would essentially result in the permanent loss of

law enforcement certification.

Even a first-time DWI could have severe repercussions for a licensed law enforcement officer. A conviction or placement on community supervision for any crime above a Class C misdemeanor can result in a suspension for up to ten years. In most cases, a DWI is a Class B misdemeanor. A law enforcement license must be suspended for at least 60 days for a Class B misdemeanor. Likewise, a DWI is a Class A misdemeanor if the driver's BAC measures 0.15 or higher. A Class A misdemeanor requires a minimum 120-day license suspension.

### **DWIs and Your Pharmacy License**

The Texas State Board of Pharmacy regulates the licensing and practice of pharmacists. Therefore, the Board has the authority to discipline licensees who commit certain crimes that are directly related to the pharmacist profession. The statute lists various crimes that the Board considers to directly relate to the duties and responsibility of license holders, including driving while intoxicated (DWI). This section includes both misdemeanor and felony-level DWI offenses.

### **DWIs and Your Law License**

The Texas Disciplinary Rules of Professional Conduct governs the actions of lawyers in the state of Texas. Unlike some state agencies, the state bar does not list specific offenses resulting in attorney discipline. Instead, Rule 8.04 states that attorney misconduct occurs when an attorney "commit[s] a serious crime or commit[s] any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Serious crimes include any felony involving moral turpitude and some other non-DWI-related crimes.

This rule is exceptionally vague, making it difficult to determine whether a single DWI would trigger any disciplinary action. The circumstances surrounding

the DWI, as well as a previous history of DWIs or other substance abuse issues, are likely to affect whether the Texas Bar takes disciplinary action against an attorney who is convicted of DWI. Various factors will also influence the type of sanction the attorney may receive for the violation.

## 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.

This month's client survey focuses on the firm's accounting practices as they pertain to invoices.

Are your invoices easy to read, can you quickly discern all work completed on your case matter?

Yes, invoices are easy to read and the work is clearly defined

Select

Somewhat, work is a bit confusing but I can usually figure it out

Select

Not at all, I call AR every month with questions or to clarify work done

Select

## Hallmark Achievements



### Texas Department of Insurance v. HH

**Facts:** Client HH ("Client") had a complaint filed against him with Texas Department of Insurance ("TDI") by a former part-time contract employee ("Complainant"). Complainant had been a paralegal at a law office in the same building as Client's insurance agency, and she wanted to get out of the law business and into the insurance business. Client encouraged her to obtain a temporary license from TDI, which she did and Client mentored her while she continued to work as a paralegal at the law office. She continued to renew her temporary license and obtained her permanent license in October 2020. On June 16, 2021, she resigned her



paralegal position to work on a contract basis with Client as an administrator and sales agent. Complainant worked part-time under Client's tutelage as the Insurance Administrative Assistant for 10 – 15 hours a week and brought in a total of one paying customer during her period of employment with Client. Client and Complainant split the commission on the sold annuity 50/50.

Complainant became frustrated at her lack of success and terminated their relationship on September 1, 2021. Client rescinded his sponsorship soon afterwards and Complainant filed a complaint with TDI, accusing Client of unethical behavior and that he was splitting commissions with a CPA firm that he worked with.

**Outcome:** Bertolino Law Firm assisted Client on sending a robust, 14-page response to the TDI complaint saying that the Complainant was not putting enough hours in to be trained properly or to market to potential clients. Since she did not quit her full-time paralegal job as promised, there was not enough time for training and growth in a temporary license period of 180-days. It put the Complainant's work ethic and truthfulness in a bad light. On November 17, TDI sent out a letter saying they were closing the complaint file with no discipline on Client.

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### **Texas Board of Nursing v. UL**

**Facts:** Our client UL, hired firm after she was reported to the Board of Nursing ("BON") for allegations of misappropriation of morphine. UL's employer terminated her after they investigated her conduct regarding the administration of morphine to a patient. The allegation was that she did not properly administer the morphine and that she then documented the administration the following day.



**Outcome:** After receiving all the evidence BON provided, a response was submitted to BON arguing that UL did properly administer the morphine. Evidence was provided to show that she did not misappropriate any morphine and would never take a patient's medication for his own use. Further argument was given regarding the record keeping allegation and evidence was submitted showing that the hospital's computer system continuously had errors when recording administrations. After BON reviewed the response, they offered UL a private reprimand. After the completion of the private reprimand, this matter was dismissed.

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### **Texas Medical Board v. RV**

**Facts:** Our client RV hired firm to submit her application for licensure with the Texas Medical Board ("TMB"). RV had prior disciplinary history during her residency education that she was required to disclose. Firm submitted her application and completed the proper forms that were required based on her educational history. Firm drafted the supplemental forms that explained in detail the

incidents which occurred during her residency. Providing these responses ahead of time help to facilitate the licensure process.

**Outcome:** After the application and forms were received, RV's matter went through the standard TMB process. The details were discussed and supplemented and after a few months RV's application was approved for full licensure with no investigation necessary by the Enforcement Department of TMB.

## What Should License Holders Consider About Disclosure Obligations

by Troy Beaulieu, Esq.



Often clients face legal issues connected to an obligation to disclose certain information about their criminal, professional or employment history. While the underlying event itself may be a problem, the failure to disclose this information properly and timely can compound the legal difficulty and make things worse. Frequently this will come up in an application for licensure or it can develop into a complaint. Here's what you should watch out for to minimize problems with your regulator.

### Recognize When a Potential Problem Exists and do not Ignore it

When you hold a professional, vocational, or business license from the government, it's important to keep track of any criminal, professional or employment history issues that may arise and address them promptly. Avoidance can cause significant problems because you often have a limited amount of time to report information to your regulator. For example, the Texas Real Estate Commission requires licensed brokers and real estate agents to disclose a criminal plea agreement or conviction within 30 days of the plea or conviction. That means you cannot wait until your next license renewal or until the agency asks you about it. If you do not disclose the development within 30 days, you will have violated a separate legal provision which can lead to disciplinary action all on its own. Each regulatory agency is different, and some may require you to disclose the matter upon arrest, after being criminally charged or once you've resolved the matter (either through dismissal, deferred adjudication, plea agreement or conviction after trial).

Just as much as criminal matters, regulatory or employment matters may also require disclosure to a regulator. For example, many agencies require disclosure of any past disciplinary history in your profession or by another state agency when you apply for a new license, renew a current license, or upgrade your license to a higher level or different type. What they consider to be disciplinary history may not be the same as what you think or what you understood at the time the matter was resolved. Likewise, many agencies require license holders to self-report situations where they tested positive for drugs or alcohol during an employer screening. Again, time may be limited and what you are required to report varies depending on the situation.



## Talk with Your Attorney Immediately and Get the Right Legal Advice

Therefore, it is essential to consult a knowledgeable attorney to walk you through your obligations and analyze how to handle the situation. While you may have a criminal attorney helping you with the criminal court process, that attorney is probably not an expert in administrative law and how the events in your criminal case impact your regulated license. Regulators have laws in place addressing specific types or categories of criminal offenses and they require prompt action. In fact, many times the very way in which a criminal case is resolved can have huge impacts on your professional license and what your regulator may do. I would never suggest a license holder agree to resolve a criminal matter without first at least consulting with an administrative law attorney to learn how the resolution might impact their license status.

At Bertolino LLP our team is focused on professional license defense and works regularly with agencies impacting license holders. We have the knowledge, skill, and experience to provide you with solid legal advice and to advocate on your behalf to achieve the best results for your situation. If you have an issue that may need to be disclosed, do not delay in contacting Bertolino LLP so we can start working on your case immediately.

## Side Bar ...

### Team Building Fun!

To celebrate Employee Appreciation Day, Bertolino Law Firm hosted a private team-building event at the [Board & Brush, North Austin](#). Our attorneys and staff carved out some quality time to collaborate and showcase their creativity while spending time together outside of the office.



Bruce gets an assist from Troy in setting up his project



Frank and Kerry deal with a different kind of "Board" matter



Kerry lends London a hand with her dabbing techniques

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