

On The Record . . .

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Temporary License Suspension: What is it and How Could it Impact My Practice?

by Troy Beaulieu, Esq.

One of the primary reasons the legislature creates regulatory agencies with authority to license and regulate various industries is to make sure the public health, safety and welfare are protected. When the agency can show an imminent threat to the public health, safety, or welfare exists, it often has the discretion to temporarily suspend a license. This means your license could be suspended by your regulatory agency. During the suspension you may not do any activity requiring a license. This can occur suddenly and with little or no warning. Usually, you have the right to a hearing to dispute the allegations, but that may not be immediate. During my time as a state regulator, I frequently dealt with these matters, and they can be shrouded in mystery and generate questions for license holders. When do these situations arise? What should you do if your license may be or is suspended? What tools do you have to fight back so your ability to earn a living is not harmed?



What Types of Allegations Usually Give Rise to Temporary Suspensions?

Agencies will seek temporary suspension for more egregious or serious allegations of misconduct which show imminent and ongoing harm the public. The idea is that

the wrongdoing at issue is so serious and continuing that immediate action is needed or the public will suffer immediate harm. The agency is therefore justified in temporarily halting one's ability to practice to protect the public. Minor or technical non-compliance allegations that do not suggest an ongoing and imminent threat to the public will usually not meet the legal standards for temporary suspension. These situations may involve claims that ethical standards were breached, records were falsified, significant financial improprieties were perpetrated, some form of fraud or other criminal conduct has occurred or that clients of the license holder are being immediately and significantly harmed by the license holder's continued practice. Many times, this may be the result of allegations of drug or alcohol abuse or mental health concerns that implicate the license holder's ability to meet significant client obligations. All these scenarios speak to the overarching concept of public health, safety, or welfare.

What is the Typical Agency Authority to Suspend a License Temporarily?

State agencies must have statutory authority to temporarily suspend a license. Usually that legislative authorization is found in their enabling statute. Details for this process varies with each agency so it's important to look at the specific law for your regulator to determine your rights, the process is and how best to defend your livelihood. Those details are often found in the agency's rules which will address the process. Some agencies give you the chance to participate in the temporary suspension hearing and others force you to wait and make your case in front of the State Office of Administrative Hearings or in some other forum later. Most agency statutes do require the regulator to expedite cases involving temporary suspension because the ability to earn a living has been impacted without the opportunity to fight the accusations.

What Should you Do if you Become Aware of a Temporary License Suspension?

1. Get legal counsel immediately -- You should immediately contact an attorney who specializes in license defense work. This area of the law is unique, and the specific laws vary amongst agencies. When you retain an attorney, it will typically be under tight timeframes and move quickly. Make sure to have the relevant information ready for your attorney. You will need to be flexible with your schedule so the attorney can consult with you and may need you available to testify.

2. Comply with any Board Order - If the agency has issued an order suspending your license its important that you do not violate that order. Failing to comply could be independent grounds for discipline (even if you were unjustly suspended). It could also expose you to criminal liability by engaging in licensed activity when you have no authorization to practice. Many agencies make it a criminal offense.

How Might your Lawyer Assist you in Fighting Back Against a Temporary Suspension?

Different options may be available to combat temporary suspension your license or to get the suspension lifted if one is already in place. Talk with your lawyer about your options. Below are several possibilities:

1. Participate in the Temporary Suspension Hearing -- If the agency has not yet suspended the license, you may be able to participate in the temporary suspension hearing.

2. File suit in the Judicial Courts to obtain a temporary restraining order / injunction - A temporary restraining order or injunction is a court order requiring someone to do or refrain from doing something. Your attorney may be able to file a lawsuit and ask the court to

issue a temporary restraining order or injunction to prevent the agency from suspending you or lift a suspension already in place. Typically you must show that you will suffer immediate harm that cannot be fixed later if the court does not issue the injunction. For example, you might lose key contracts or clients that cannot be reacquired later if suspended or the agency may not have followed the law in issuing the suspension. Using this tool usually requires attending a hearing and making argument to a judge. Your lawyer may need you to provide testimony.

3. Expedite a hearing on the case before the State Office of Administrative Hearings – Your due process rights entitle you to a hearing to show why you did not violate the law. However, that can be some time after the agency temporarily suspends your license. Unlike the temporary suspension process, which is usually overseen by a panel of Board members or agency staff who vote on whether to suspend a license, the contested case hearing at SOAH is managed by a neutral administrative law judge. This person does not work with the agency and may be better suited to independently assessing the evidence. Your lawyer may be able to use laws that require accelerating the timeframe for hearings where a temporary suspension has taken place. Sometimes the law provides a hearing to address whether the suspension continues pending the full trial.

4. Contact your state legislators' offices and place pressure on the agency – Sometimes contact from your state legislator's office about process improprieties or inequities help the agency reevaluate the appropriateness of a suspension. This can be used in tandem with our courtroom-oriented tools.

5. Agreed Cease and Desist or Limitations on Scope of Practice – Sometimes through negotiation, your attorney can reach an agreement where you will refrain from certain activities but retain an active license. This is a tool that

can sometimes generate a “win-win” result where the agency gets what it needs during pendency of your case, but your license is not suspended.

Employee Spotlight



Meet Sean Reilly, Summer Associate with Bertolino Law Firm

As a summer associate, Mr. Reilly is responsible for assisting the firm’s attorneys with meeting clients’ legal needs.

Sean is a student at the University of Texas School of Law where he competes on the Interscholastic Mock Trial team and in intramural moot court tournaments. In 2020, Sean graduated from the University of Texas at Austin as a liberal arts honors student and received a bachelor's degree in economics and humanities, earning honors and special honors respectively. While an undergraduate, Sean was a cheerleader on the official University of Texas Spirit Program. As a cheerleader, Sean had the privilege of being on the field of DKR during home football games and being on the court of the Frank Erwin Center during home basketball games.

In his free time, Sean can be found cheering on either the Longhorns or Liverpool F.C., listening to podcasts, or playing video games.

[Click here for more of Team BERTOLINO](#)

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.

Clients, to what extent do you agree with the following statement:

I am very satisfied with the information I receive about my case matter.

Strongly agree

Select

Agree

Select

Neither agree nor disagree

Select

Disagree

Select

Strongly disagree

Select

Hallmark Achievements

SW v. GD et al

Facts: Our client, GD, hired Bertolino Law Firm to defend him in an appeal concerning a patient's civil malpractice claim in connection with dental work our client performed. The firm represented GD in the trial court, and we won the case at the summary judgment stage based on several argument, but the patient appealed.



Outcome: The firm submitted a brief to the court of appeals explaining why the trial court judgment was correct. While preparing the brief, we recognized a misstep the other side made by failing to address a key aspect of the trial court's judgment. We successfully argued that because this issue was not addressed, the court of appeals should decide the case in our client's favor without considering the other side's legal arguments. As a result of this waiver argument, the court of appeals immediately ruled in our client's favor, and our client did not have to continue with a lengthy legal proceeding that could have gone on for another year.



Texas State Board of Dental Examiners v. KH

Facts: Dentist KH hired the firm to respond to a complaint filed with Texas State Board of Dental Examiners regarding an alleged Minimum Standard of Care violation of not maintaining a written informed consent signed by the patient. The firm researched the facts of the case and found out that the Complainant was not the patient, but an ex-fiancée who did not want to pay for the dental procedure after they broke up. The firm sent a Response to the TSBDE Preliminary Investigation of Client with attached exhibits containing complete patient records that showed successful dental treatment and pointed out that the Board had no jurisdiction over a third-party complaint regarding a fee dispute.

Outcome: After the Response and Exhibits were received by the TSBDE, HK's matter went through the standard process. Based on the Response and Exhibits, the TSBDE voted to close HK's matter without any sanction on his license and kept confidential the details of the investigation from the public.

Texas Education Agency v. FFA



Facts: Our client FFA, hired firm to assist her in responding to a notice of investigation filed by TEA alleging that FFA abandoned her teaching contract. The investigation stemmed from FFA's resignation in February of 2022. She resigned in the middle of her contract due to a change in circumstance. Her mother, who took care of her children while she was at school, contracted COVID in January of 2022 and after contracting the virus was unable to fully recover. She therefore advised FFA that she could no longer watch her children. Due to this abrupt change in circumstance, FFA resigned without notice.

Outcome: After consultation with FFA, BERTOLINO LLP, submitted a response to the allegations. Within the response we argued that FFA did not violate any code section related to contract abandonment because she had cause to resign. We argued that her lack of childcare was an immediate need that arose after the time that she signed her contract. We provided witness statements from her mother and her mother's physician as well as documentation of her positive COVID results and her urgent care records. After analysis of the response and consultation with TEA staff, TEA dismissed the complaint and closed the investigation.



Texas Medical Board v. IM

Facts: Our client IM, hired firm to assist him in responding to a complaint filed against him by TMB. The complaint alleged that he was aiding and abetting nonmedical staff in the practice of medicine at the medical spa where he worked as medical director. There was video evidence of a nonmedical employee injecting a substance into a patient's face and lips. There were further allegations that he was not conducting appropriate physician- patient visits and that he was not qualified to perform certain procedures.

Outcome: During an informal conference in front of a board panel, BERTOLINO LLP, argued that IM did not aid or abet anyone in the practice of medicine. We explained that the video was created without IM's consent or knowledge. That the injector in the video was the CEO of the medical spa and the patient was the spa's marketing director. We provided a statement from them that the video was meant for marketing and advertising purposes, and nothing was actually injected into the patient. Further, we provided a witness statement that corroborated IM's statements regarding what he allowed nursing staff to do during patient visits and records of his past training in certain procedures. After the conference, the board dismissed the complaint and closed the matter.

Side Bar ...

Did you know that Bertolino LLP provides free presentations to trade groups and professional associations?

As one of Texas' premier license defense firms, we bring a wealth of knowledge and insight into how the regulatory world intersects with your licensed and regulated industry. If your group is interested in learning how their state regulator impacts their license, career, and industry, and what they can do avoid problems with their regulator, contact [Troy Beaulieu, Director of Legal Services](#) to request a presentation. We will be happy to send one of our knowledgeable Bertolino LLP attorney team members to share important information, helpful insights, and resources on a variety of topics your colleagues will find valuable.



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