

# On The Record . . .

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## How Can I Prepare for Meeting with My Licensing Defense Attorney?

by Tony Bertolino, Esq.

When you face a disciplinary complaint against your professional or occupational license, you need legal assistance. Even if the complaint is completely without merit, you must take it seriously. A single complaint can derail your career and livelihood if it results in sanctions against your license. Therefore, you should not hesitate to contact a license defense lawyer as soon as you receive notice of a complaint.



## Preparing to Meet with Your License Defense Lawyer

The first step to getting legal representation in your license disciplinary proceedings is to meet with your licensing defense attorney. Before your meeting, you should take some steps to prepare for your meeting. Taking these steps will help you have a more productive meeting and allow your lawyer to understand your case better.

1. Gather all written documentation related to your case. For example, if you are a medical professional, gather your patient file, medical records, billing records, and any other documentation related to the complaint at issue. Likewise, if you face an occupational complaint, compile a file with all written documentation about the customer, any work you or your employees performed for the customer, and any bills you sent.

2. Write a narrative of everything you can remember about the incident that led to the complaint. Be as specific as possible, including dates, times, and names of people you interacted with or your office staff who interacted with the complainant. Even the smallest detail may be important, so do your best to include everything you can remember.

3. List all potential witnesses who may have information related to the complaint, including your office staff, other patients, or customers, and third parties. Give their names, contact information, and your assessment of whether they would be willing to provide testimony in your case.

4. Compile all documents you have received from your licensing board concerning your complaint. In addition, if you have faced previous discipline for any reason, also bring any documentation that you have regarding your previous disciplinary history, as that can impact potential penalties that you receive in a subsequent disciplinary case.

5. Make a list of questions for your lawyer. If you have never been involved in disciplinary proceedings or investigation before, you will have questions about the process. For instance, you may want to know what to expect as the investigation progresses, how to respond to the complaint, the timeframes for your case to be resolved, and potential penalties and sanctions that you could face. Making a list of these questions in advance helps prevent you from forgetting to ask important questions during your meeting with your attorney.

### **Maintaining Confidentiality**

Although you likely will find it tempting to do so, you should generally not disclose any information about the complaint or its contents to your staff or colleagues except as is necessary. Of course, you may have a duty to report the existence of a complaint to your insurance carrier, particularly if you work in a

profession in which you carry malpractice insurance. Likewise, if you are employed by an entity or in partnership with one or more other individuals, you may need to report the complaint to the appropriate personnel.

However, it would be best if you generally refrained from discussing the complaint's substance or any allegations against you with staff or coworkers. Even if they are sympathetic to you or view them as being on your side, they are likely subject to interrogation and even the subpoena power of your licensing board. Moreover, if they have negative information about your case, they may be compelled to disclose it. In addition, if you inadvertently admit to a violation of the law or the rules that apply to your profession, your licensing board may discover that information.

Only your conversations and written communications with your lawyer are confidential and privileged, meaning that your licensing board cannot access them. However, any conversations, text messages, emails, or other correspondence with coworkers, family members, or friends is discoverable by the licensing board and potentially may be used against you in your disciplinary proceedings. Therefore, it is best to say as little as possible about your situation except when speaking to your attorney.

### **Being a Good Client**

Having a solid license defense attorney on your side from the outset of your disciplinary proceedings can be critical to a positive outcome in your case. However, being a good client also is an essential step in building a defense to the allegations against you.

After your initial meeting with your lawyer, they will likely ask you for additional documentation and information that you may not already have provided. It would help if you were prompt and diligent about providing that information; in many cases, that

information may be more easily accessible to you than to your lawyer. Likewise, the lawyer would not request the information if they did not think it would be useful in your case.

Similarly, you should always follow your lawyer's advice in handling your disciplinary proceedings. Your lawyer has handled disciplinary proceedings like yours before and knows what to expect, whereas you may not. Therefore, following the lawyer's advice is more likely to put you in a better position to get good results in your case. Likewise, disregarding your lawyer's advice could directly jeopardize the outcome of your case and put you in a worse position than you were in before.

## Employee Spotlight



Please join us in congratulating  
**London de la Teja**  
on 8 years of service with Bertolino Law Firm!

### 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:

Bertolino Law Firm is innovative and forward thinking from a technology point of view.

Strongly agree

Select

Agree

Select

Neither agree nor disagree

Select

Disagree

Select

Strongly disagree

Select

## Hallmark Achievements

### Texas Department of Licensing and Regulation v. PK



**Facts:** Our client PK, hired firm to assist her in responding to a complaint filed with TDLR. The complaint stemmed from a work-related incident where PK was working as a speech pathologist with an infant- client. At the end of her session, the infant began to slide out of their highchair and PK grabbed the infant. When doing so, she made the infant’s feeding tube pop out. The parent of the infant witnessed the incident. Later, the parent reported the incident to PK’s employer. The employer was not made aware of the incident prior to the call, as PK never documented the incident in her case file. She was terminated and her employer filed a complaint with TDLR.

**Outcome:** After review of the complaint, BERTOLINO LLP, submitted a response packet to the TDLR investigator. Within the response we argued that the incident that occurred was purely accidental. PK’s actions were not intentional and were only done in order to prevent the infant from further injury. Further legal argument was provided showing that since the incident occurred after the session had technically ended, PK was not required to notify her employer or to document the incident in her case file.

After the response and additional character evidence was reviewed by TDLR staff counsel, the matter was dismissed by TDLR for lack of evidence.

### Texas Medical Board v. MG



**Facts:** Our client MG, hired firm to represent her for a second time, against allegations brought by TMB. MG had two separate cases with TMB both set for an informal settlement conference. The first case was related to allegations stemming from her first matter. That prior case resulted in a non-disciplinary sanction. However, TMB brought the case back up for a second time and argued that the first time around TMB was not specifically making allegations regarding this specific matter. The allegations were that MG resigned her privileges from a hospital while under investigation. The first case regarded her resignation from another hospital and that she did not tell this hospital about the resignation. This case was used as “background” information for the original matter. However, several hundreds of pages of documentation for this case were provided for the original case. No substantially new documentation was provided for this matter.

The second case regarded MG’s termination from an out of state hospital.

Originally the hospital terminated MG for cause. However, after further review and consultation with her out of state attorney, the hospital modified the termination to be without cause.

**Outcome:** During the informal conference BERTOLINO LLP, argued that TMB should not have brought back the first case because it was essentially the exact same case as her prior matter. The firm argued that although this matter was not the main allegation in the prior case, it was substantially argued, and evidence was provided in order to further TMB's assertions. TMB staff argued that since this matter was not cited in MG's non-disciplinary sanction and was not officially sited in the summary of the allegations, it was not a repeat matter. Firm countered these arguments by providing evidence that even though TMB did not follow up on this matter, it was closed by the time MG had her first informal conference. Therefore, no new information or issues were raised and all the questions TMB staff asked of MG during the informal conference were already asked during the first informal conference. Thereby showing that the matters were the same and that it would be unjust to recommend disciplinary action for conduct MG already received action for. This panel agreed and specifically pointed out to TMB staff that this current matter was resolved back in 2020 and that TMB had ample opportunity to specify this case in MG's original matter. It was not MG's fault that TMB did not take such action. The panel dismissed this matter.

Regarding the second case, the firm argued that since MG's termination was not for cause, there was no reason to discipline her. There was no evidence provided by TMB that MG committed any type of misconduct which caused her termination. Essentially the hospital agreed that they terminated her for no reason at all. TMB staff tried to use MG's own admission that she was late on the day that she was terminated, as a rational for disciplinary action. However, the firm countered that argument by stating that even if she was late, that did not rise to the level of misconduct. Further, without any documentation from the hospital, TMB cannot say that was even considered in the hospital's original rational for termination. The panel agreed and again dismissed this matter.

## When Should My Lawyers Talk to Each Other?

by Troy Beaulieu, Esq.



In the February issue of *On the Record*, I discussed how some regulatory complaint matters may develop into three distinct legal proceedings involving a civil lawsuit, the regulatory matter and even criminal charges. In this article, we'll explore situations where you should make sure your lawyers handling seemingly different matters talk with each other because the results in one case could have an impact on the other.

### When the Cases Involve the Same Factual Matter

The most obvious scenario where you want your lawyers talking with each other is when you have a matter concerning the same facts, events, or circumstances which have parallel civil, regulatory, or criminal proceedings / investigations ongoing. It is essential in these situations that your lawyers are

aware of the other case and are communicating because the actions taken in one case could have an impact on the other. Coordinated efforts should be made by the different lawyers, especially when it comes to making statements to investigators, giving testimony (in court or in a deposition), providing documents, or responding to written discovery requests. Overall, having a coordinated strategy for addressing these parallel legal proceedings is very important to avoid problems.

### **When the Cases Involve Matters that Might Impact Each Other**

While two cases may not be directly related, the legal matter may impact your regulated license and could result in the agency seeking to discipline or even revoke your license. For example, regulatory agencies require license holders to inform them when they have been convicted of a crime. In fact, in more serious criminal offenses, even where the outcome is a deferred adjudication (a form of resolution that does not result in a conviction) can still have a negative impact on your license. So, it becomes very important before you make key decisions in your criminal case to consult with an administrative law attorney who can give you solid advice on how your criminal case might impact your license. Another example is child support payment arrears. Your family law attorney may be assisting you with addressing child support payment issues. However, in many instances, failure to pay child support can lead to action against your license by your regulator. Again, obtaining legal advice from an administrative law attorney about how the child support issue could impact your license is important before making decisions. Another example is taxes. Sometimes, outstanding tax debts owed to the Internal Revenue Service may result in agency action to revoke your license. While your criminal, family law or tax attorney may be very knowledgeable about their areas of the law, they are not knowledgeable administrative law attorneys. The examples I have listed are only a few scenarios and there are many other legal matters that could implicate your regulated license. You have invested hard work, long hours and made a significant financial commitment to your chosen profession. Take the additional time to obtain sound legal advice from attorneys who focus on administrative law issues regularly before you make lasting decisions that could impact your chosen career.

### **Conclusion**

Overall it is important to coordinate decision making with your different attorneys who may be handling different aspects (civil, regulatory or criminal) of what is essentially the same factual matter, event or situation. Likewise, while it may not be obvious on the surface, many seemingly unrelated legal matters could have legal implications and significant impact on your regulated license. Invest the time and effort in protecting your livelihood by consulting with a knowledgeable administrative law attorney. Bertolino LLP regularly practices administrative law, is knowledgeable about these issues and stands ready to assist you in protecting your livelihood.

**Side Bar ...**

**Partner with Bertolino LLP to Learn About Your Regulator**



Does your industry understand how it is impacted by their regulator? At Bertolino LLP our firm focuses on protecting people's livelihood when interacting with their state regulator. What we have found is most people do not understand

the regulatory world they are a part of when they hold a state regulated license. Your trade or professional associate can benefit from a free presentation by a Bertolino LLP attorney. With an hour-long presentation that includes time for a Q&A session with your members, your group can gain valuable insight into topics such as: the complaint process, regulatory do's and don'ts, criminal history impacts on license holders, how to get involved with your regulator and the application process. Many state agencies will provide continuing education credit for these types of presentations if requested. To learn more, contact [Troy Beaulieu](#), Director of Legal Services, to discuss this exciting opportunity for a free presentation by a Bertolino attorney team member.

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