

On The Record . . .

Official Newsletter of BERTOLINO LLP

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Director of Legal Services

Frank A. King, Esq.
Senior Associate Attorney

Kerry J. Bloodsaw, Esq.
Associate Attorney

London de la Teja
Accounts Receivable Manager

Penny Smith
Certified Paralegal

Melissa Caffery
Legal Assistant

Habitat for Humanity

by Tony Bertolino, Esq.

Bertolino LLP is proud to announce we are partnering with Habitat for Humanity to sponsor an upcoming build day. On September 17, 2022, our office will send our team of



attorneys and legal professionals to turn raw materials into a place that a local Austin family can call home. We look forward to fresh morning air and sunshine to join the drive for affordable housing for a carefully selected family.

Our team works hard every day to serve our clients, but we also like to regularly take a break from casework and litigation to assist those in our community. Our upcoming day with Habitat for Humanity will be the latest in our list of volunteer events such as those with the Central Texas Food Bank, the SAFE (Stop Abuse for Everyone) Alliance, AFSP (American Foundation for Suicide Prevention) and the Veterans' Day 5K Run. We consider it part of our mission to stand up for those who need a safe place to live, just like we stand up for licensed professionals in Texas.

Habitat for Humanity in Austin

Austin Habitat for Humanity is dedicated to ending the challenging cycle of poverty housing by providing well-built places to live for those in need of shelter. Many people face housing insecurity in our area which leads to many other concerns such

as maintaining job security and ensuring reliable safety for their families. The Austin Habitat for Humanity branch seeks to bring people together for the purpose of putting love into action to build more than just houses. They want to build a sense of community among people from all walks of life in the city.

Habitat for Humanity's vision is to create a world where everyone has a decent, safe place to live. Providing the secure anchor of a home for those in need has long-reaching effects on the economy and societal health of local neighborhoods, cities, counties, states, and the country as a whole. Because Bertolino LLP has built our practice on helping those in our community, volunteering to assist with the construction of new homes with the Austin Habitat team is one more way to serve those we live and work with.

The Austin Habitat for Humanity operates ReStore locations around the city, allowing members of the public and businesses to donate building materials for community construction projects. Further financial support comes from those who shop there for their own home renovations. Along with ReStore, local businesses and community funds often contribute to ensuring Habitat for Humanity remains able to keep building as many homes are needed.

Who Builds the Habitat for Humanity Homes?

Habitat for Humanity relies on community members like the team at Bertolino LLP to volunteer their time, money, enthusiasm, and skills to pick up the work where the last volunteers ended. Those who participate do not need prior building experience because there are many jobs to do on each home site. Everyone can find a way to assist and do meaningful work throughout the time they are there.

Volunteering to help is easy through Habitat for Humanity's website at www.Habitat.org. After registering,

you'll see a list of current locations and projects so you can decide how you want to help. When you've chosen a project, you'll need to complete a volunteer registration and online safety course.

Because the home sites are active construction areas, being careful and diligent is extremely vital to making sure a day spent helping is safe for everyone involved. Families who are selected to receive houses also volunteer their time for the build, giving them a sense of satisfaction and pride in knowing they helped turn wood and concrete into their own home in every sense of the word. Houses are modestly sized but provide room for the needs of each family to thrive and grow.

Habitat for Humanity is able to keep costs manageable by using volunteers for the construction process and utilizing locally available materials, whether purchased or donated.

How Else Does Habitat for Humanity Help the Community?

The Austin Habitat for Humanity group does more than build houses. It also provides no-profit, no-interest loans to the families who receive homes to help them as they adjust to their new living situation. In many cases, low-income families benefit from an economic boost to ensure they can manage the demands of home ownership along with the other parts of their lives, such as work, school, and community.

An additional arm of Austin Habitat includes arranging repair services for those who already have a place to live but whose home needs repair. This program focuses on seniors and those with disabilities who own their living space but who can't physically perform the repairs themselves or can't afford to have them done.

Substandard living conditions such as faulty wiring, inoperable heating or air conditioning, broken plumbing, or a

leaking roof contribute to a diminished quality of life. Austin Habitat works to correct these problems so individuals can stay in homes that are clean and safe.

Bertolino LLP Believes in the Habitat for Humanity Vision

Research in the Austin area shows that our city has many families who can benefit from receiving affordable housing. A stable home also enhances children's overall health, as well as their school performance. Austin Habitat for Humanity believes that making the dream of homeownership come true for every family in need creates vital benefits to our community and society. And families with a safe home have the opportunity to grow wealth and have a basis for a stable future.

Our law firm predominantly serves those who serve their communities: doctors, lawyers, teachers, nurses, and trade workers. Helping them maintain their licensing in adverse times ensures our city and state have the professionals they need in a demanding world. By volunteering to contribute to missions such as building homes with Habitat for Humanity, we are proud to be part of making the City of Austin, our neighboring counties, and the entire state of Texas a better place to live and work for all of us.



Save Money on Legal Fees: Respond to Your Attorney Promptly

A series by London de la Teja, AR Manager

Your attorney can work much more efficiently when he or she gets the answers they need without needing to spend additional time following up with you.

When our law firm onboards a new client, time is of the essence. We normally have deadlines to meet, and time is not always on our side. That said, it is extremely important that we have an open line of communication with our clients. We often need quick response times, which is why we make sure you have access to our Client Portal, so you can immediately see any communication and requests.

To ensure quality legal representation, we depend on our clients to give us all

information about their case. We need all the background on your matter, regardless of the sensitivity, so we know how to best serve you. We might request additional items from you or need you to return documents to us. It is a working relationship and we both will be relying on one another as a team. We are only a few clicks away if you have any questions and our staff is more than happy to assist you.

Our greatest joy is to give our clients the best representation possible. We pride ourselves in being a 100% Client-centered law firm. We appreciate your communication, information, and timely responses so we can do our best for YOU!

Hallmark Achievements

Texas Medical Board v. JB



Facts: JB received a notice of complaint from the Texas Medical Board. The complaint was from his former hospital employer. The hospital had filed the complaint against him because he quit his position as a treating physician without any notice to the hospital or his patients, including patient RK. JB engaged Bertolino LLP to defend his license. JB was responsible for clinical treatment, in-patient, nursing home patients and was attending physician at the hospital ER. JB left employment at the hospital because of an acute crisis he was enduring regarding his workload of treating too many COVID patients and because hospital staff was not taking COVID seriously by not wearing masks or protective equipment. JB had requested help from the CEO of the hospital because he was burned-out and afraid of contracting COVID. Afterwards, JB told the CEO of the hospital that he was not renewing his expiring contract with the hospital. JB first treated the patient RK and had to admit him to the hospital because he had heart and acute kidney failure. JB saw RK 2 or 3 times afterwards. RK had an appointment with JB, but never saw him because JB had already resigned from the hospital.

Outcome: Bertolino LLP served a robust response with exhibits to the Texas Medical Board showing that other medical providers, including the ER, had been treating RK. RK was later discharged with no lasting harm. After an investigation, the Texas Medical Board sent a notice saying that the investigation had been dismissed because there was insufficient evidence that a violation of the Medical Practice Act had occurred. Texas Medical Board found that JB had resigned from the hospital in November 2021 and the network providers were available to care and treat RK afterwards. There was no evidence JB had a medical or psychiatric condition which could impair his medical judgement, or his ability to practice medicine, or that he had any disciplinary actions against him by peers.

Texas Health & Human Services Commission v. PW

Facts: PW's Childcare Facility self-reported to the Texas Health & Human Services Commission ("HHSC") that a

child's mother had complained that her child was injured with a broken arm after being pushed off of the playground slide. HHSC's Investigator came out and issued two citations to the Childcare Facility for failure to oversee and care for the child or attend her injuries. An Administrative Review was scheduled by Bertolino LLP to overturn the citations



Outcome: A video was available from the Childcare Facility. Bertolino LLP worked with PW and Staff to review the video and elicit testimony on what happened. During the Administrative Review, the video was shown to the HHSC Supervisor with PW and Staff to narrate the events being shown. The child was shown in the video being picked up by the parent at the Childcare Facility with no injuries - she was pointing and moving the purported broken arm and clearly not upset or crying. The HHSC Supervisor overturned both citations based on the video evidence and testimony.

Texas Board of Nursing v. SHR

Facts: SHR is a Registered Nurse who has been licensed since 2019 with no complaints or disciplinary history. She received a notice from Texas Board of Nursing that a complaint had been filed against her and an investigation had been opened. She engaged Bertolino LLP to defend her license. The allegations were that, while working as an RN at a home health care service, SRH had failed to properly maintain records, monitor or administer care to a patient, who subsequently expired.



Outcome: Bertolino LLP served a robust response and 5 exhibits to the Texas Board of Nursing Complaint Investigator which showed that:

- SRH was neither employed with the home health care service during the initial dates of allegations and then she was a new employee on orientation during the later period of time at issue;
- SRH was not assigned to care for the patient - other nurses and staff were;
- SRH did not have a nurse-patient relationship and did not have a duty to care for the patient because she was not identified in the medical records as a primary caregiver.

Medical records, organizational structure and policy records were requested from the home health care service by the Texas Board of Nursing Complaint Investigator but were never supplied. After effective advocacy by Bertolino LLP, the Texas Board of Nursing sent notice to SRH that "[t]he investigation conducted by this office has been closed" and there was no sanction on SRH's license.

What Are Your Options If You Dislike Your Regulatory Agency's Decision in Your Case?

by Troy Beaulieu, Esq.



It can be difficult to hear bad news from your regulator. The state agency that holds your license or your application for licensure has a huge impact on your livelihood, and career. When the agency decides to discipline you, deny your application, or suspend or revoke your license that has devastating consequences to your ability to earn a living, support your family and grow your professional career. Clients often wonder what can be done if they are unhappy with the agency's decision in their case. Is there no higher

power to appeal to? What can be done to save your license or your application? In this article we'll discuss what options you may have if you find yourself disappointed by the final decision your regulator has made in your case.

Final Agency Action in Your Case Is an Important Event That Requires Action

Regulatory agencies act in complaint and application matters by issuing what's called a final order. This final order reflects the agency's consideration of your case, arguments made, any evidence submitted, witnesses who may have testified and the applicable law. This typically occurs after you have had a contested case hearing where you had the opportunity to argue in front of an administrative law judge and put on your case (evidence and witnesses). The judge usually sends a written proposal for decision to all the parties and the agency. The agency will then have a meeting where they have the final say on what exactly to do in your case. The agency's final order reflects their determination of what should be done in your case. To spell out its decision, the agency's final order must recite specific factual findings related to your case (what factual events the agency believes happened etc.) and the legal conclusions reached from those factual findings (i.e., were any laws violated etc.).

If the outcome is not good, that may mean your application has been denied, that your license is being suspended or revoked, the imposition of a significant financial penalty or a combination of these things. For many people this means they'll be unable to practice their chosen profession.

If you are the recipient of a final agency order and do not already have an attorney, you should immediately contact one. Important rights and your ability to fight further are impacted by the agency's final order and you will have a very limited timeframe to preserve your rights to fight the order further. Time is of the essence as mere days can result in losing your ability to challenge the agency's decision.

File A Motion for Rehearing to Raise the Issues You Are Complaining About

The first thing your lawyer should do is evaluate potential problems with the agency's final order. There may be several potential issues that need to be addressed. It could be that the agency acted against your license on a default basis because they claim you did not initially respond to their notices or request a hearing timely. This may or may not be accurate and it could be that a procedural mistake was made in your case or that the agency did not follow the law. It could sometimes be that there is inadequate evidence to support the agency's decision or that your constitutional rights were violated during the

agency process. In some rare cases the agency may lack the jurisdiction over your matter to act. There are a variety of unique and nuanced legal issues a good lawyer should evaluate.

Once potential issues have been identified, those need to be brought before the agency properly to give it one final chance to correct things. This is typically done by filing what's called a motion for rehearing. In this written document your lawyer will identify all the issues you are complaining about in connection with the final order and associated adjudicatory process your regulator went through. The motion needs to specifically point out to the agency the findings of fact and conclusions of law, and any other legal or evidentiary issues you are complaining about. Those points should be supported by legal argument and factual evidence from the record in your case so that the agency is on notice about what you are complaining about and your basis for doing so. The importance of this motion for rehearing process cannot be overemphasized. If you fail to submit a motion for rehearing timely (i.e., usually within 25 days of the agency final order being issued) or fail to raise a particular argument in it, then you have usually waived that argument and your ability to fight the agency's final order. There are *very few* exceptions to this.

You Have Limited Time to File a Petition for Judicial Review with The Courts If the Agency Will Not Change Their Final Order

After submitting a motion for rehearing the agency will usually rule on the motion and decide whether to make any changes to the final order. Ideally, the agency rules in your favor and changes the final order, but they may not agree. Even if they take no action on the motion, it will get overruled by operation of law after a certain amount of time expires. If the motion for rehearing has been overruled (either explicitly or based on a lack of agency action), the agency order will become final, and you usually have 30 days from that date to file a petition for judicial review with the judicial courts. Here again, time is critical, and you should contact a lawyer right away if you do not have one. If you fail to file for judicial review timely, the judicial courts will usually lack jurisdiction to hear your case and with few exceptions, you will have lost the ability to fight against the agency decision further.

Also keep in mind that judicial review is not a constitutionally protected right. It's only available if the legislature has provided this opportunity in laws applicable to your regulator. Your lawyer should be able to assist you in determining whether your situation provides for the right to judicial review of the agency's final order. Many if not most regulatory agencies provide a statutory right to judicial review.

What Is a Petition for Judicial Review and How Does It Help My Case?

Once the agency order has become final (typically because a motion for rehearing has been denied) you will have 30 days to file a petition for judicial review (usually in Travis County district court). A petition for judicial review does exactly what it says: it asks the judicial court system to review what the agency did in your case. The judicial court system will review the agency's final order generally to:

(1) Evaluate whether the agency followed the law (the statutes and their own

rules);

(2) Make sure your constitutional rights (state and federal) were not violated during the process; and,

(3) Confirm that there is sufficient evidence to support the agency's decision in your case.

If the agency has not followed the law, violated your constitutional rights, or does not have adequate evidence to support what they did, the district court may undo the agency's final order and send the case back to the agency to remedy the situation. Recognize, however, that during judicial review the judicial courts are not going to redo the hearing you already had before the agency (if you had one). Generally speaking, you will not get to put on a new case where you call witnesses, introduce evidence, and argue about the underlying issues that were at issue before the agency. Instead, the judicial courts will focus on ensuring that appropriate, fair, constitutional process was followed consistent with the law. Even if you disagree with the conclusions the agency reached about the evidence in the case, that is not enough to set aside the agency order. The standard the courts will use to evaluate the evidence is usually going to be the substantial evidence standard and it is a very low bar for the agency to overcome. Even if judge may think you should have won the case based on evaluation of the evidence in the record, the judicial courts are not supposed to substitute their judgment for the agency's decision. Usually only in cases where there is basically a complete lack of evidence supporting the agency's finding or decision on a specific issue will the court system unwind the agency's final order. On the other hand, if there is a legal process deficiency or your constitutional rights were violated, the courts will typically undo the agency order and send it back to the agency to correct the problem, so you have a full and fair opportunity to defend your license or application.

Often you may be able to ask the judicial courts to temporarily halt enforcement of the agency's final order, while the petition for judicial review is pending in the court system. This can be very helpful if the agency has suspended or revoked your license because it will allow you to continue practicing while your case is pending before the judicial courts.

In addition, if your lawyer determines that the agency's actions were frivolous, you may be able to ask the court to award you reasonable attorney's fees and costs. However, this is not the norm, so do not expect that you will be able to recover attorney's fees simply because you get the agency's final order overturned.

When the judicial court finally rules on your case, it can decide to affirm the agency's decision and uphold the final order, or it can reverse and remand the case back to the agency to correct an error.

Conclusion

When your regulator issues a final decision in your case, there are a few remaining opportunities available get an unfavorable decision corrected. However, time is critical, and it must be acted on promptly if you want to continue fighting. A motion for rehearing outlining your claims and arguments should be filed timely so the agency has a final opportunity to correct their

decision. Then, you may have the right to request the judicial courts evaluate what the agency did to make sure it complies with the law, the constitution, and the applicable evidentiary standards. If you do not have an attorney, contact one immediately. This is a very technical, complicated and time sensitive area of the law that can have a huge impact on your rights and your ability to continue fighting the agency's decision impacting your livelihood. Thankfully, the lawyers at Bertolino LLP are well equipped for just this type of situation, with years of experience practicing before and working in Texas state regulatory government. If we can help you with fighting against an agency order, contact us right away.

Side Bar ...



On September 2nd, BERTOLINO Law Firm proudly sponsored the Combat Veterans Motorcycle Association (CVMA) "Capital of Texas" Chapter 23-7's 4th Annual Golf Tournament with proceeds benefitting local veterans. The CVMA is an Association of Combat Veterans from all branches of the

United States Armed Forces who ride motorcycles as a hobby. Their mission is to support and defend those who have defended our country and our freedoms. CVMA focuses on helping veteran care facilities provide warm meals, clothing, shelter, guidance, or a simple "Thank You" and "Welcome Home."

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