

# On The Record . . .

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## What Happens If I Fail to Respond to My Licensing Board Complaint Notice?

On many occasions, I have received a telephone call or email from desperate potential new clients who have just discovered that they are no longer permitted to work in their chosen profession. The state of Texas has cut their source of income to support their families. The reason: failure to timely respond to a licensing board investigator's notice of complaint.



The rules and laws that relate to professional disciplinary proceedings can be complex. Failing to respond to a licensing board complaint within a short timeframe can result in the board taking adverse action against your license, leaving you little legal recourse.

No matter how groundless you believe the allegations against you to be, the outcome of a disciplinary complaint can be devastating for your personal and professional life. Ignoring or failing to respond to a complaint can have disastrous consequences. You must take these proceedings seriously, no matter the circumstances, to avoid a negative result.

## Default Orders

In many cases, you must respond to notice of a complaint from your licensing board or agency within the appropriate timeframe to avoid a "default order." A default order is a document that gives the license board or agency the ability to impose whatever sanctions they are recommending based on the violations of rules or laws that they allege you have committed. Due to a lack of a timely, written response, the agency will issue this order without your agreement and without first holding a hearing or asking for any

further response from you concerning the complaint.

### *Texas Department of Licensing & Regulation*

For example, the Texas Department of Licensing & Regulation (TDLR), which licenses and regulates various occupations, issues a Notice of Alleged Violation (NOAV) to a licensee when an investigation has revealed evidence of a violation of a rule or law. If the licensee fails to respond within 20 days after they receive the NOAV by accepting the TDLR's recommendations and proposed penalties or requesting a hearing, the TDLR Executive Director could enter a default order.

### *Texas Board of Nursing*

While the Texas Board of Nursing (BON) does not immediately enter a default order when a nurse does not respond to a disciplinary complaint, it could eventually issue a default order. For instance, if the BON cannot reach a nurse during the informal settlement process for a complaint, it will automatically file formal disciplinary charges against the nurse. Formal charges require the nurse to respond in writing within 20 days. If the nurse at that point fails to timely respond, the case may proceed to revocation of the license holder's nursing license by default.

### *Texas Commission on Law Enforcement*

Under Texas law, a licensee must respond to a petition or notice of violation from the Executive Director of the Texas Commission on Law Enforcement (TCOLE) no more than 20 days after receipt. Failure to respond or file an answer within that timeframe may result in a default order. Likewise, if the licensee files a timely answer requesting a contested hearing and fails to appear after receiving proper notice, the executive director may move for default judgment against the licensee.

### **Failure to Provide Information**

Many licensing agencies also have rules and potential sanctions for licensees for failure to timely respond to requests for information. In addition, failing to answer questions or produce requested information can be further grounds for disciplinary action and sanctions in many

professions.

### *Texas Medical Board*

Under Texas law, if the Texas Medical Board (TMB) requests a licensee to produce medical records related to a disciplinary investigation or proceeding, they must do so within a reasonable time. This section defines a reasonable time as no more than fourteen calendar days or a shorter time if the urgency of the situation requires it or there is a possibility that the records may be lost, destroyed, or damaged. Likewise, 22 Tex. Admin. Code §179.4(e) states that a physician or license holder of the TMB shall respond in writing to all written TMB requests for information within ten days of the date of the request. Failure to timely respond to a request can result in further disciplinary action.

### *Texas Real Estate Commission*

Texas law provides that the Texas Real Estate Commission (TREC) can suspend or revoke a license or take other disciplinary action if the license holder “fails or refuses to produce on request, within a reasonable time, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder.” TREC may also suspend or revoke a license if the license holder “fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission...”

### *State Bar of Texas*

Under Texas state bar rules, “a lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.” Accordingly, this behavior is classified as a type of misconduct for which licensed attorneys in Texas may face disciplinary action.

In this newsletter article, I briefly addressed and cited a small handful of laws in which a licensee could experience dire consequences for failure to respond to a licensing agency complaint. The most

important step is to communicate. Otherwise, the licensing agency presupposes that you are purposely ignoring the process and refusing to participate. As a result, licensing agency has no other choice but to issue a default order, which could result in a revocation of your license and a direct impact on your ability to financially support yourself and your family.

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## Hallmark Achievements

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### Texas Real Estate Commission v. RH

**Facts:** Our client, RH, hired us to help him defend against a complaint filed with the Texas Real Estate Commission in connection with wrongdoing by one of his sales agents and protect his real estate broker's license and reputation against potential disciplinary action stemming from the complaint allegations.



**Outcome:** The firm consulted with the client to understand the facts in his case and then gathered the evidence to fight against the allegations. The firm submitted a thorough response to the complaint explaining why the complaint against RH had no merit and should be dismissed. After the staff attorney evaluated the Firm's arguments, the Real Estate Commission agreed the complaint lacked merit, that disciplinary action was inappropriate, and they dismissed the case against RH. The client was given a non-disciplinary advisory letter and took no action against his license.



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### Texas Department of Insurance v. MF

**Facts:** Our client, MF, hired us to help him fight back against a complaint filed with the Texas Department of Insurance and protect his reputation and livelihood against potential disciplinary action stemming from complaint allegations filed by an insurance company.

**Outcome:** The firm consulted with the client to understand the facts in his case and then gathered the evidence to protect the client's reputation and license. The firm contacted the Department of Insurance staff attorney to explain how the client had not violated the law and how their case had inadequate evidence to support any disciplinary action. After the staff attorney evaluated the Firm's arguments, the Department of Insurance agreed the complaint lacked merit, did not warrant disciplinary action, and dismissed the case against MF. The client was given a non-disciplinary warning letter reminding him of his obligations and took no action against his license.

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### Texas Appraiser Licensing & Certification Board v. GH



**Facts:** Our client, GH, hired us to help him defend against a complaint filed with the Board and protect him against potential disciplinary action stemming from the complaint allegations.



**Outcome:** The firm gathered the necessary documentation, coordinated with the client's consulting expert and prepared a strong written response demonstrating why the client had not violated the law in performing his appraisal and why disciplinary action was not appropriate. After the Board completed their investigation, they agreed the matter did not warrant disciplinary action and dismissed the case. The client was given a non-disciplinary warning letter reminding him of his obligations and the Board took no action against his license.

## When Experts are Needed for Your License Defense Case

by Troy Beaulieu, Esq.



Industries that require a license to practice can be complicated and technical in nature. You have invested time learning your industry, acquiring knowledge, skills and obtaining the credentials necessary to be successful. The complaints people face can be technical and complex. It may involve complex biochemistry in connection with medical board allegations against a physician, complicated structural engineering concepts and calculations for designing a building, or complicated real estate market data analysis by an appraiser in a dynamic real estate market. Whatever the industry, the regulatory agency typically has experts assisting them. You should consider doing the same, so you are poised to protect your livelihood, reputation, and career.

This article will discuss experts and when it may be appropriate to hire one to help with your compliance matters. Remember there are two basic types of experts. First, there are consulting experts - these are experts you hire to consult with you and your attorney. They can provide valuable information, insights, and expertise about your activity as a license holder prior to a complaint or prior to responding to a newly filed complaint. Typically, consulting experts give advice behind the scenes and do not testify in legal proceedings. Also remember that the advice and feedback consulting experts share with you and your attorney does not have to be shared with your regulator. So the consultant can be open, honest and objective in sharing with you positive and negative information and opinions based on their assessment of your situation. In contrast, testifying experts are hired to do just that - testify in court on your behalf. They can provide their opinions and conclusions, but that information will be disclosed to your regulator's attorney in advance of the trial.

### Obtaining Expert Assistance Before You Ever Get a Complaint: Staying Proactive About Compliance

One often overlooked opportunity that I encourage most license holders to

consider is hiring a consulting expert to evaluate your professional / occupational practice before you ever receive a complaint. Many times, consulting experts can come into your business and provide you with an evaluation of your current practices and compliance with current requirements. The expert can analyze current work product samples to confirm you are meeting your obligations as a license holder. The expert can identify areas where you could cure deficiencies or improve what you're doing so they meet best practices, even if they are not technically out of compliance with your regulator's legal requirements. The expert can also look at what any employees and independent contractors are doing to ensure their work does not raise potential problems. Taking a proactive approach to compliance helps mitigate your risk of a future complaint, or civil lawsuit. Plus, even if one is filed, you may be able to draw upon the consultation experience and documentation to help demonstrate the complaint lacks merit. In addition, you will already have a good resource to turn to if you decide you need an expert to assist with handling the complaint.

### **Retaining A Consulting Expert Before Responding to A Complaint: Putting Your Best Foot Forward**

In addition to hiring an expert to help defend your license in court, it's important to remember the value of having a consulting expert who can provide insight, feedback and assessment of the complaint allegations, documentation, and evidence *before* you submit your written response to your regulator. While you are a trained expert in your field, you are responding to a complaint and do not have an objective perspective because you are the one who has been accused of wrongdoing. The experience of getting a complaint is an inherently stressful situation that impacts the ability to be objective and unemotional. Having an outside perspective from an objective set of eyes will go a long way towards submitting an effective complaint response. Consulting experts may be able to point out potential arguments, issues or problems that otherwise might be overlooked which you can address in the response. They can also provide novel perspectives on addressing accusations or pieces of evidence. Sometimes they can help you understand shortcomings or violations that you will need to address in your complaint response.

### **Hiring A Testifying Expert If Your Case Goes to Court: Achieving Victory in Your Case**

If you receive a complaint from your regulator and the matter does not get dismissed or resolved by agreement, you will probably have to take the case to court. . If the factual and legal issues in dispute involve expert opinions, you are most likely going to need to retain a testifying expert to help you combat the allegations being brought by your regulator. So, if litigating the matter in court becomes necessary, it's important to have a conversation early in the process with your lawyer about retaining a testifying expert. If your regulator has their own expert testifying about supposed deficiencies in your work product or practice, you will need someone on your side who can rebut that testimony and provide a different perspective on the facts of the case. Even when your regulator may not have an expert testifying for them, there may be circumstances where it is advantageous to consider having your own expert testify anyway. You and your lawyer should have a thorough discussion about the pros and cons of having a testifying expert in your case and what makes sense for your situation.

If you already hired a consulting expert, you are most likely going to want to avoid having that same person be your testifying expert. Once an expert agrees to serve as a testifying expert their findings, opinions, thoughts, and the documentation they have analyzed typically becomes available to your regulator's attorneys. So, you will usually want to look for a new, separate testifying expert. However, your consulting expert can be a great resource by helping you with potential referrals of people who specialize in the topic at issue in your case.

### **Conclusion: What Should I Remember About Experts**

When complex technical matters are involved, consider hiring an expert to assist you. Your regulator has experts working with them and you should too. Consulting experts can assist you before you get a complaint and provide feedback on how to improve your work product and practice, so you do not receive a complaint. Even if you've already gotten a complaint, hiring a consulting expert to assess the complaint allegations and give you and your lawyer valuable feedback is an important consideration. As your lawyer prepares to submit arguments to your regulator, leaving the best impression you can when filing your response is huge; this often cannot be done without partnering with a consulting expert who will share their opinion about the allegations. Finally, if you do have to fight your regulator in court, having a solid testifying expert can make a huge difference; many times having one is necessary to meet the evidentiary standards. Thankfully, Bertolino LLP works with a variety of consulting and testifying experts to defend clients' livelihood and reputation when their regulator goes on the attack. We are ready to help you protect your license and partner with industry experts to fight back against your regulator.

## 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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