

On The Record . . .

Official Newsletter of BERTOLINO LLP

December 2022



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Ten (10) Things To Know When Your Licensing Board is Investigating You

by Tony Bertolino, Esq.



I have been practicing law and defending professional and occupational licenses in Texas for almost 20 years. And during my many years in practice, I have noticed ten (10) general things that a license holder must know when dealing with a Board investigation. Under Texas law, licensing boards and regulatory agencies must administer complaints filed against their licensees and they are required by statute to investigate filed complaints. So, before I start, please don't be misled in believing that you are immune from the process. If your profession requires a license to do your job, then it is very possible for a complaint to be lodged against you at some time during your career. The longer you practice in your respective licensed profession, the more likely you will face a Board investigation. It's just a matter of time. So, while my list is not exhaustive, the following are my 10 important things to know if your license is ever under attack:

#1 Right to Counsel. You have the right to counsel during the entire complaint and investigation process. As soon as you are notified of a complaint filed with your licensing Board, you should consult with a professional license defense attorney immediately.

#2 Initial Response. Your initial response to the Board is critical. It is not uncommon that a complaint is dismissed outright after the Board investigator receives a thorough and well-planned response to its initial inquiry.

#3 Face the Allegation. It is important to face the allegations head-on. Even if you believe the complaint is baseless, it is important to take it

seriously. Even if you feel confident that the investigation will yield nothing, it is critical to mount an effective defense from the very start.

#4 Respond to the Board. Timely respond to all requests from the Board. Failure to respond to complaint allegations or other Board requests can lead to additional penalties or sanctions you would otherwise avoid if you timely responded to all requests.

#5 Cautiously... Respond to the Board. Anything you say or send to the Board can be used against you as evidence. So do not contact the Board directly and try to talk your way out of the complaint. You may inadvertently make omissions of guilt or give the investigator information that could harm your case.

#6 Keep Your Mouth Shut. Under Texas law, only communications with your attorney are protected by the attorney-client privilege. So do not talk with colleagues, bosses, clients, or anyone else about the Board complaint. Such communications are not protected, and those people can be subpoenaed to testify about what you said.

#7 The Enforcement Division is not Your Friend. The function of every Texas licensing Board is to protect the public, not your interest or your license.

#8 The Process can be Complex. Each Texas licensing Board handles complaints in their own way, which is spelled out in their rules and in state law. Board enforcement procedures can be complex and difficult to navigate. Your professional license defense attorney can help you navigate the process.

#9 Be Honest. Do not alter, destroy, or attempt to hide evidence. Do not lie to the Board. Texas licensing boards are staffed with good attorneys and investigators who know how to do their jobs. You do not want to get caught lying or hiding evidence because that will make your situation and any disciplinary actions you will have to face significantly worse.

#10 Hire a Lawyer. This may sound repetitious from item number one above, but it deserves repeating. You have a right to counsel. And hiring a license defense attorney does not make you look guilty. In fact, it shows the board that you are

serious about addressing the complaint and defending yourself. So, lawyer up!

Employee Spotlight:



Save Money on Legal Fees: Respond to your Lawyer Promptly

A series by London de la Teja, AR Manager

Time is always of the essence when working in the legal field. This goes hand in hand when it comes to us working on your case matter. Very often, we are working on borrowed time, so it is essential to keep up to date on your Clio Portal, Emails, and phone messages. We want to make sure that we have our lines of communication open and can get a hold of you and vice a versa. The Boards seem to always find ways to ask us for everything under the sun. So, we must make sure we are able to quickly get those documents and return them, so we can push your case along. We know everyone is very busy these days, so be sure to relay your availability if you do have a very busy schedule. That way, we know when it's best to contact you! Thanks for all your help!

Hallmark Achievements

Texas Board of Professional Engineers and Land Surveyors v. SLS



Facts: Our client, SLS, hired us to help him defend against a retaliatory complaint filed with the Board by a competitor. The client provided outstanding services to his client in connection with evaluating the competitor's work before approval was given to continue with the project the competitor had been working on. Our client had pointed out several concerning problems with the project work and the competitor was unhappy with those findings and filed a complaint to retaliate against our client.

Outcome: The firm gathered the necessary documentation and prepared an aggressive, written response undercutting the veracity of the competitor's baseless allegations against SLS and urging the Board to dismiss it. On request, we provided additional information that further vindicated our client and demonstrated the complaint against SLS was bogus. After completing their investigation, the Board completely dismissed the complaint against SLS, finding that the complaint lacked credible evidence of any wrongdoing.

Texas Appraiser Licensing and Certification Board v. RB

Facts: Our client, RB, hired us to help him disclose his felony criminal conviction history to the Board and protect him against potential disciplinary action stemming from the conviction and his failure to timely disclose the convictions.



Outcome: The firm gathered the necessary documentation and prepared a strong written response demonstrating why the criminal conviction history did not relate to his licensed activity and how the client's failure to report the matter timely did not warrant any sort of disciplinary action. After the Board completed their investigation, they agreed the matter did not relate to the client's licensed occupation and that no disciplinary action was appropriate. The client was given a non-disciplinary advisory letter reminding him of his ongoing obligation to disclose future legal matters and the Board took no action against his license.

Texas Appraiser Licensing and Certification Board v. JB

Facts: Our client, JB, hired us to help him disclose his criminal history to the Board and protect him against potential disciplinary action stemming from those criminal matters and his failure to timely disclose them.



Outcome: The firm gathered the client's criminal history records and drafted a response explaining to the Board staff why the criminal history did not warrant any Board action and arguing that the client did not have an obligation to report the matters. After the Board completed their investigation, they agreed the matter did not relate to the client's licensed occupation and that no action was necessary. The Board closed the matter and gave the JB a non-disciplinary advisory letter reminding him of his ongoing obligation to disclose future legal matters.

THE IMPORTANCE OF SELF-CARE AND ITS CONNECTION TO YOUR STATE REGULATED LICENSE

by Troy Beaulieu, Esq.



Regardless of your occupation, most everyone faces work-related stressors, relationship, and mental health challenges at some point during their career. How we choose to handle those dynamics and care for ourselves can have a profound impact on our state-issued license. This article provides you with information about the interplay between mental health dynamics, self-care resources and keeping your license in good standing.

Self-Care and Prioritizing Mental Health are Crucial to Avoiding Potential

Problems with Your Regulator

State regulatory agencies are charged with protecting the public and one dimension of that legal responsibility is when they have a license holder struggling with mental health or substance abuse challenges. License holders are frequently responsible for taking care of a client's financial, health, business or legal-related needs. For this reason, state agency's typically have legal standards in place for when they are required to step in and protect the consuming public against a license holder who has manifest mental health or substance abuse problems that are impacting the public health, safety, or welfare. For example, a physician who is struggling with substance abuse should obviously not be treating patients when impaired. An accountant overcome with depression and anxiety such that they cannot timely file client taxes should not be providing client services. This can sometimes result in a complaint being opened with your state regulator, and in extreme cases it can serve as a basis for immediate and temporary suspension of a person's license to practice their occupation or profession.

Given these potential regulatory consequences, it is important for license holders to manage their stress levels, rely upon their support network and take the steps necessary to care for their mental health. Doing this proactively will protect against things getting out of hand and causing collateral consequences such as failing to meet obligations or duties to clients or even being charged with criminal conduct. If you are struggling with depression, anxiety, relationship struggles, significant stress, substance abuse or other mental health problems, consider seeking a referral to a psychiatrist or seeing a counselor, psychologist or other therapist. They will be able to provide you with tools, techniques, and when necessary, medication (only a licensed physician can prescribe medication), to address these problems before they become overwhelming and negatively impact your regulated license.

Employers and Trade and Professional Associations Frequently Provide Mental Health Wellness Resources

In addition to your own resources, employers and trade or professional associations may provide resources to help maintain mental well-being so that your career stays on track and free of unwanted entanglements with your regulator. For example, many employers provide mental health and wellness related services to their employees through the employer's employee assistance program (commonly referred to as an "EAP"). These services include things such as counseling services, referral resources for substance abuse treatment and referral assistance for psychological or psychiatric care providers. Likewise, professional organizations also provide such services. For example, the State Bar of Texas help to struggling licensed attorneys through the Texas Lawyers Assistance Program ("TLAP").

Even if you Face a Complaint, Many Regulators Have Diversionary Programs Geared Towards Mental Health and Substance Abuse Treatment

If you do get a complaint that involves mental health or substance abuse issues at its core, do not assume that you will end up with public disciplinary action on your record. Many state regulators provide their license holders with referrals to state-sponsored programs. For example, the Texas Medical Board has the option to use the Texas Physician Health Program and the Texas Board of Nursing can make referrals to the Texas Peer Assistance Program for Nurses. Regulators often have the discretion to route complaints that involve substance abuse or mental health issues to these alternative resolution programs so that license holders get the help they need without a disciplinary

black mark on their record and sometimes even avoid public disclosure of the incident because the law allows the matter to be kept confidential.

CONCLUSION

Crucial to a successful career is protecting your livelihood and the state-regulated license you have worked hard to earn. In today's fast-paced and stressful business environment that means taking care of yourself and your mental well-being. Staying aware of your self-care needs and proactively addressing them before things get out of hand will go a long way towards protecting your license from state regulators who are required to step in if the public is being put at risk. Even if you do receive a complaint that involves mental health or substance abuse problems, your regulator may have diversionary programs that avoid traditional disciplinary outcomes and publication. Of course, license holders who find themselves facing a complaint involving mental health or substance abuse aspects should consult with a well-qualified law firm with attorneys who know the available resources, legal options and solutions to get you the help you need and the best results in your case so you can continue in your livelihood. Bertolino LLP has a proven track record of doing just that with an array of attorneys knowledgeable in this niche area. When your livelihood is on the line and you are already struggling, you need a legal professional to protect your interests. Bertolino LLP is here to help in just those types of circumstances.

Side Bar ...

ChatGPT: The future of AI

Everyday we grow more dependent on our technology. 10 years ago a flip phone was considered advanced, and now we have watches on our wrist that can write emails, call people across the world, and keep track of our health. Technology is growing faster and more powerful with everyday that passes and AI's are becoming a new and regular part of our life. At one point AI's were in the background of our lives, but now we're seeing them adapt and change right before our very eyes.

ChatGPT has already proven to be an extremely intelligent system capable of creating complicated lines of code, fixing broken code, and writing out remarkably high quality essays on almost any topic you can think of. The question for us is simple. How long will it be before AI's are competent enough to replace some of the tasks that are required in the legal and political fields? Will AI soon comprehend all the laws known to us, and be able to give suggestions to legal counsel? How will that effect the courts, and is there a point in which it will go too far?

There are so many questions and so few answers. What are your thoughts about the future of AI? Will it be a good or bad change?

Feel free to share your thoughts and tag us on LinkedIn. We would love to hear what you all think about this topic, as the possibilities of discussion are endless!

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