

On The Record . . .

Official Newsletter of BERTOLINO LLP

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What is a Texas Licensing Board or Agency, and What Does It Do?

by Tony Bertolino, Esq.

After you have spent significant time completing your coursework, studying, and passing your licensing exam or certification test, obtaining your professional or occupational license is a major milestone. However, even after achieving your career goals, you must still follow the rules and laws that govern your chosen profession. Violations of those rules or laws can lead to licensing board or agency investigations and, quite possibly, disciplinary action against your license, which could have substantial negative consequences for your professional life and livelihood.



Understanding Licensing Boards and Agencies in Texas

Some professions have separate state licensing boards or agencies that license, govern, and regulate them. For instance, the State Bar of Texas is the licensing agency for Texas attorneys. The Texas Board of Nursing is the licensing agency for all nurses in Texas, including licensed vocational nurses, registered nurses, and advanced practice registered nurses. The Texas Real Estate Commission governs, oversees and monitors licensed real estate agents and brokers.

In some cases, agencies license and monitor multiple professions. For example, the Texas Medical Board licenses not only physicians but various other medical professionals such as:

- Physician Assistants
- Acupuncturists
- Medical Radiologic Technologists
- Surgical Assistants
- Medical Physicists
- Perfusionists
- Respiratory Care Practitioners

Some state licensing agencies also house several other licensing boards. The Texas Behavioral Health Executive Council acts as the umbrella agency for the following licensing boards:

- Texas State Board of Examiners of Marriage and Family Therapists
- Texas State Board of Examiners of Professional Counselors
- Texas State Board of Examiners of Psychologists
- Texas State Board of Social Work Examiners

One of the largest state agencies that licenses and regulates occupations is the Texas Department of Licensing and Regulation (TDLR). This agency licenses a lengthy list of occupations, including barbers and cosmetologists, electricians, podiatrists, property tax consultants, water well drillers and pump installers, among many others.

The Function of Texas Licensing Boards

In creating licensing boards as government agencies, the Texas legislature gives them authority over all aspects of licensure and other functions. Creating these boards generally aims to protect the public from unprofessional or harmful conduct by professionals. Therefore, these boards, along with the legislature, establish standards for licensure that individuals must meet to obtain and maintain licenses. They also set continuing standards for individuals to keep their licenses, such as periodic renewal and completion of continuing education.

Licensing boards also receive, investigate, and take any necessary action on

complaints received about licensed individuals, with some exceptions. For example, some agencies have specific divisions within them that are designed to handle enforcement of the rules and laws that pertain to those occupations. If an agency discovers through an investigation and collection of evidence that a violation has occurred, then formal disciplinary proceedings may commence. Of course, the licensee is always afforded due process, including a fair opportunity to respond to the allegations against them in the complaint and the right to have legal counsel at all stages of the proceedings.

You should always keep the true purpose of licensing boards in mind, particularly in communicating or dealing with them. Their goal is to protect the public, not you as a licensee. As a result, even if their representatives act as if they are friendly and, on your side, divulging details to them, particularly about disciplinary matters, is likely not to your benefit. You may inadvertently give the licensing board information that they can and will use against you in your case. When you are facing a licensing board complaint, your best means of protection is to retain legal counsel to represent your interests from the outset of the proceedings.

The Function of the State Office of Administrative Hearings

If formal disciplinary proceedings ensue from a complaint that a licensee contests, a licensing agency will often transfer the case to the State Office of Administrative Hearings (SOAH) for review. SOAH is an independent state agency that will help resolve disputes between licensing boards and licensees through administrative evidentiary hearings or mediation. This agency will assign an administrative law judge (ALJ) to hear the case and, in most cases, issue a proposal for decision (PFD) to the relevant licensing agency. Ultimately, it is usually up to the licensing agency or board to determine whether to accept or reject the ALJ's proposal for decision.

Employee Spotlight

Team Bertolino welcomes LaJuana Acklin to the Firm.

You may have had a chance to meet LaJuana since joining the Firm in early March. Here are a few fun facts about our newest Senior Associate.



My nickname at work: LJ

I am skilled at: Seeing the silver lining in a negative circumstance and comforting people in their time of need.

On the weekends and in my free time I am often: at spin class or hanging out with my family.

Number one on my bucket list: I want to vacation in the Maldives

The best sweet or salty snack: plantain chips

Best movie ever: The Hunger Games series

My favorite candy: Twizzlers

My favorite sports teams: I am not a big sports fan but I do love watching gymnastics so my favorite sports team would be the US Women's Gymnastics team.

If I had a theme song that played every time I walk into the office it would be: You Make Me Feel (Mighty Real) by Sylvester

People say I look like: Tempestt Bledsoe (Vanessa from the Cosby Show)

The best part of my job: It is never a dull moment. There is always a new problem to solve, and I get to engage in a creative process of cultivating unique legal approaches to best serve our clients.

[Learn more about LaJuana here](#)

Congratulations to our COO on Four Years of Service with the Firm



It is with great pleasure to formally announce and congratulate our Chief Operating Officer, Sheri Middlemas, on her four years of service with our law firm.

Since joining us on April 15, 2019, Sheri has been an invaluable asset to our firm. She has consistently demonstrated amazing leadership, strong work ethic, and a commitment to excellence. Her contributions have played a vital role in the growth and success of the Bertolino Law Firm and I am grateful for her dedication and hard work.

During her time here, Sheri has been instrumental in streamlining our operations and ensuring the efficient functioning of the “business-side” of our law firm. She has implemented a number of key initiatives (and many other Policies, Systems and Procedures) which have helped us to enhance our legal services, maintain efficiency and productivity and improve client satisfaction. Among the many key initiatives that she has implemented, one of the most memorable initiatives (and perhaps the most important to me) was the transition to a paperless law office at the end of 2019, which was finalized right before the COVID-19 shutdown.

Sheri has also been a mentor and a source of inspiration for many of us here at the Bertolino Law Firm. Without a doubt, her leadership, vision, and professionalism have set a high standard for all of us to follow. Her contributions to our law firm have not gone unnoticed, and I am extremely proud and fortunate to have her as a part of our team.

I would like to take this opportunity to thank Sheri for her hard work and dedication over the past four years, and to congratulate her on this significant milestone. We all look forward to continuing to work with her and to achieving even greater success together in the years to come.

Please join me in extending our warmest congratulations to Sheri Middlemas on her four-year anniversary with our law firm.

-Tony R. Bertolino

Hallmark Achievements

Texas Board of Architectural Examiners v. MBL

Facts: Our client, MBL, hired us to help him defend against a complaint filed with the Texas Board of Architectural Examiners to protect his license as an architect and reputation against potential disciplinary action stemming from baseless complaint allegations a former customer lodged because he was unhappy with a construction project our client completed through his separate company and not in his capacity as an architect.



Outcome: The firm consulted with our client to understand the facts in his case, and we gathered documentary evidence to demonstrate the former customer’s allegations were groundless both factually and legally. The firm submitted a thorough response to the complaint explaining why the complaint against MBL had no merit, was not legally viable and should be dismissed. We then prepared our client to answer additional questions from the assigned investigator and advocated on his behalf to help the investigator understand why the complaint lacked merit and needed to be dismissed. We then coordinated with our client’s civil attorneys handling a related, but private civil lawsuit to get the former customer to rescind the complaint as part of resolving the civil lawsuit. After the staff evaluated the Firm’s arguments, and realized the former customer would no longer voluntarily cooperate with their investigation, and MBL acknowledged his obligations as a practicing architect,

What to do When Your Regulator Exceeds Their Legal Boundaries

by Troy Beaulieu, Esq.



Nobody ever likes receiving a complaint or having an issue with their license application. While it's not pleasant, sometimes the government is taking a reasonable position because there is a criminal history issue, there's been some failure to comply with the laws governing your profession or occupation or some sort of legal deficiency. Sometimes, however, a regulatory agency goes beyond reasonable boundaries and blatantly violates the law, exceeds their authority, violates your rights, or fails to do something they are required to do. This article will address the tools, options, and other resources a license holder may use to confront a regulator exceeding their authority in a complaint or a license matter. There are typically three options you have when facing a recalcitrant regulatory agency. First, you can continue to go through the agency's normal contested case process to rectify the problem. Second, you can go directly to the judicial court system, file a lawsuit, and ask a judge to correct the injustice. Third, you can petition other government actors to assist you in obtaining agency compliance. A skilled license defense lawyer knowledgeable in administrative law may help you use these options to protect your license from injustice.

Going Through the Agency Contested Case Process

The first option you have is to request a contested case hearing on your complaint or application matter. This typically means the case will be referred to the State Office of Administrative Hearings for assignment to an administrative law judge who will hear your case, evidence and arguments and issue a written decision. This is the most frequent approach to addressing an injustice and most agencies give you a right to a hearing on the outcome of your complaint or application. However, going through this process often takes a long time. In fact, some agencies are backlogged so much that license holders are waiting for 1-2 years to have their day in court. The law does provide you with the ability to recover your attorney's fees and costs *if* the judge determines the agency action was frivolous. If after the hearing and the agency's issuance of the final decision the injustice still hasn't been corrected, you may seek judicial review in state district court and ask the judicial courts to correct things. However, the process of judicial review is lengthy, and the applicable legal standard (substantial evidence) makes overturning agency decisions based on the facts challenging. Demonstrating the agency made a legal error is key to success in judicial review. If the court finds the agency's action was frivolous you may be able to recover your attorney's fees and court costs. You may also seek temporary injunctive relief from the agency's final action, pending the court's ruling on whether the agency's decision was legally proper. So, if your license has been suspended or revoked by your regulator, getting the court to set that aside via an injunction is an important tool you should consider.

Judicial Remedies Available by Filing Suit Against The Agency

In many cases, it may be possible to go to the judicial courts without first going through the agency contested case process. This reduces the time you are waiting to get relief from the agency's misconduct. However, immediate relief from the judicial courts is a high bar because the general expectation is that you first exhaust all efforts with the agency before asking the courts to intervene. Situations that typically require immediate court assistance are when the agency has temporarily suspended or automatically revoked your license without an opportunity to challenge it. Interruptions in your ability to do licensed work cuts off your ability to fund your legal matter so getting court help quickly is important. Most of the time your case before the regulatory agency is still moving forward (albeit more slowly) so you are essentially dealing with two separate (but related) legal cases at once, which will increase costs. In these "ultra vires" type lawsuits, you are typically asking the court for immediate injunctive relief (i.e., asking the court to order the agency to stop doing something illegal or to do something they are required to do). If your constitutional rights were violated, you may assert federal claims under 42 U.S.C. § 1983 and ask for your attorney's fees under 42 U.S.C. § 1988. In addition, when you are asking the agency to perform its non-discretionary, ministerial duty, you may be able to seek mandamus relief.

Petitioning Other Government Actors to Help You Right the Injustice

A third option is to ask other government actors to help you force the agency to follow the law. Contacting your state or federal legislators, legislative committee members with agency oversight or the governor's office, may provide additional avenues to rectify things. Sometimes those officials may have a contact person whom they have dealt with before to facilitate quicker, more responsive communication from agency staff. This, coupled with direct oversight of the agency's activities, may put these public servants in a better position to assist with your problem. Sometimes adding a news media component can put additional pressure on the agency. Unlike the judicial courts and agency process which lead to written and enforceable legal decisions, this avenue is a more indirect approach, placing political and oversight pressure on the agency to produce a change in behavior. Also remember to consider any federal government actor which may have federal oversight powers. For example, the real estate appraisal industry is primarily regulated at the state level, but the Appraisal Subcommittee does have federal oversight of those state programs and can produce changes in how state appraiser regulators behave if the conduct runs afoul of federal requirements.

Conclusion

Overall, if you face a regulator threatening your license, you need skilled attorneys fighting for you in these three areas. Bertolino LLP has the know-how to aggressively fight back when a regulator has violated the law and put your license at risk. It's too complicated and too much is at stake to pursue these options on your own. Instead, hire a law firm with the experience, knowledge, and skill to fight back against government overreach. Bertolino LLP is just the firm you need to do that. The agency has lawyers hard at work on their side to threaten your license, livelihood, and reputation. You need a law firm like Bertolino LLP using these tools to fight back for you.

Side Bar ...

The Bertolino Government Regulatory Impact Scholarship



Time is running out, get your submission in. Bertolino LLP has established a \$2,500 academic-based scholarship to be awarded to a deserving student who is pursuing higher education at an accredited college/university or graduate school. Students from all areas of study

are invited to participate. **Submission deadline is June 15, 2023.** Visit [Bertolino Government Regulations Scholarship](#) for more information.

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