

On The Record . . .

Official Newsletter of BERTOLINO LLP

March 2023



[Click here to share with a friend or colleague](#)

Our Firm

Tony R. Bertolino, Esq.
Managing Partner

Sheri L. Middlemas
Chief Operating Officer

Troy Beaulieu, Esq.
Director of Legal Services

LaJuana Acklin, Esq.
Senior Associate Attorney

Kerry J. Bloodsaw, Esq.
Associate Attorney

London de la Teja
Accounts Receivable Manager

Penny Smith
Certified Paralegal

Melissa Hooper
Certified Paralegal

Reinstating Your Professional License After Revocation

Professional disciplinary proceedings can result in harsh sanctions, including revoking your professional license. In this situation, it may seem like the end of your career. However, different professions have varying rules about when or if you can apply for reinstatement (or reapplication) of your license after revocation. For example, the rules for reinstating a nursing license differ from those for reinstating a teaching certificate.



Whether a professional licensing board will grant your petition for reinstatement depends on the circumstances surrounding your revocation and the evidence you provide showing that you have overcome or resolved those circumstances. Nonetheless, obtaining your license following revocation can be challenging in almost all circumstances. In addition, some situations permanently disqualify you from holding a professional license.

Nurse License Reinstatements

If the Texas Board of Nursing (BON) has revoked your nursing license, you can petition the BON to reinstate your license. However, under Texas law, you cannot petition for reinstatement until at least one year has passed since the BON issued the order revoking your license. Sometimes, a BON Board Order may stipulate that you must wait a longer period before applying for reinstatement. At that point,

you must submit a Petition for Reinstatement of Licensure, along with supporting documentation, which will vary according to your situation.

Examples of supporting documentation that you may have to submit with a reinstatement application include the following:

- Documented proof of at least one year of sobriety, as shown by:
 - Discharge papers from any inpatient or outpatient treatment program for substance abuse;
 - Letter from your treating physician indicating your ability to practice nursing safely;
 - Letter from your past/current therapist/counselor; d) Random negative drug screens (12 months);
 - Documentation of regular support group attendance (with signatures from chairpersons or others who can attest to your sobriety); and
 - Letter of support from your sponsor.

- Documentation of your completion of any requirements of your criminal conviction, as shown by:
 - Copies of the charges/indictment;
 - Copies of the judgment/disposition; and
 - Written verification from the Court or its officer of your compliance with and/or successful completion of probation/parole.

You must also include letters of reference from current or former employers or other professional references (preferably three or more letters) and documentation verifying that you have attended at least 20 hours of continuing nursing education programs.

Upon receipt of your petition, the BON will either provide you with a proposed Reinstatement Agreed Order or schedule an informal conference to discuss your petition, typically within two to three months. At an informal conference, you will meet with a panel of BON staff at that conference and answer questions about your nursing competence and rehabilitation. The panel will then recommend whether you should receive a proposed Reinstatement Agreed Order. You can request a hearing before an administrative law judge if your petition is denied.

Teaching Certificate Reinstatement

Under Texas law, if the State Board for Educator Certification (SBEC) has revoked an individual's teaching certificate, they may not reapply for a teaching certificate any earlier than five years from the date that the SBEC revocation order became final. At that time, the individual may submit a new application for a teaching certificate to the Texas Education Agency (TEA) for consideration. The individual will be subject to the same requirements as an initial applicant for a teaching certificate.

In some cases, an SBEC Board Order may specify that an individual must wait longer than five years to reapply for a teaching certificate. SBEC also may issue an order stating that a teaching certificate is permanently revoked without an opportunity to reapply or otherwise as it deems appropriate. A rejection by TEA of an application in this situation is not an administrative denial. Thus, the individual has no right to request a hearing on the rejection of the reapplication.

However, if the individual is eligible to reapply for a teaching certificate and the TEA denies the reapplication, the individual does have the right to challenge the denial. More specifically, the individual can request a contested case hearing before an administrative law

judge at the State Office of Administrative Hearings (SOAH). Even so, if the individual cannot obtain reinstatement of his or her teaching certificate, they may only reapply for a teaching certificate after five years have passed from the date of denial.

Get Help Obtaining Your Professional License Following Revocation Today

The revocation of your professional license can significantly affect your career and your ability to support yourself. However, in some circumstances, you may be able to reinstate your license and get back into the profession that you love.



Save Money on Legal Fees

A series by London de la Teja, AR Manager

Why is it important to meet with the financial team when being onboarded to a law firm?

Hiring a law firm to help you with your matter can feel like your entering a new country and you don't speak the language. We totally understand what that's like. Then, let's also try to buy something with a different currency. That's how many people might feel when they start to look at their invoices or speak to someone about their case matter. We know that it can feel that way to many people, so we want to do our best to help with that transition. One of the most concerning parts of hiring a law firm to help you is determining how the finances work. To help with that transition Bertolino Law Firm's Accounts Receivable Manager conducts a call with all new clients during the onboarding process.

The primary purpose of this call is to explain how the billing cycle works, review all financials on your fee agreement, review what your invoices look like and show ways to help save money during your time with us. This call is extremely beneficial for our clients as it helps them have a full sense of what to expect and how they can reach out if they need help. We pride ourselves on being client centered, and going the extra step to make sure our clients are well informed and know how to reach out if they ever need anything. Another great part about this call and all future calls, messages or communication with our Accounts Receivable Manager is that there is never a charge for this service. We welcome our clients to keep in contact if they ever need anything and we are happy to assist!

Facts: Our client, SP, hired us to defend her against two complaints filed with the Texas Department of Licensing and Regulation to protect her license as a behavior analyst and reputation against potential disciplinary action. The groundless and retaliatory complaints were filed by two former, disgruntled employees, one of whom had been terminated from employment with our client for cause.



Outcome: The firm consulted with the client to understand the facts in both complaints, and we gathered the evidence needed to explain to the Department that these allegations lacked merit and any evidence. The firm submitted a thorough response to both complaints showing how the complaints against SP had no merit and had to be dismissed because many of the claims did not even amount to potential violations of the law. After the staff evaluated our written submission, the Texas Department of Licensing and Regulation agreed there was no evidence to support any violations of the law by SP, and they dismissed both complaints against our client.

Texas Real Estate Commission v. CB

Facts: Our client, CB, hired us to help him defend against a complaint filed with the Texas Real Estate Commission to protect his real estate sales agent's license and reputation against potential disciplinary action stemming from baseless complaint allegations a property seller lodged because he was unhappy with a transaction where our client represented the buyer.



Outcome: The firm consulted with the client to understand the facts in his case, and we gathered the documentary evidence to demonstrate the seller's allegations were groundless. The firm submitted a thorough response to the complaint explaining why the complaint against CB had no merit and should be dismissed. We then prepared the client for an interview with the Commission's assigned investigator and advocated on his behalf during the interview to help the investigator understand why the complaint lacked merit and needed to be dismissed. After the staff evaluated the Firm's arguments, the Real Estate Commission agreed the complaint lacked merit, that there was no evidence to support any wrongdoing by CB, and they dismissed the case against CB, taking no action against his license.

Texas Board of Nursing v. MS

Facts: MS is a Registered Nurse who has been licensed since 2006, and as an LVN before that since 1998. She has no previous complaints or disciplinary history. She received a notice from Texas Board of Nursing that a complaint had been filed against her by her former employer and an investigation had been opened. The allegations were that, while working as an RN at a dialysis clinic, MS had failed to properly maintain records, follow doctor's orders, monitor and administer care to a patient who later expired at the ER. She engaged Bertolino LLP to defend her license.



Outcome: Bertolino LLP served a robust narrative response and 14 exhibits to the Texas Board of Nursing Complaint Investigator which showed that the allegations were baseless, unfounded and just plain wrong. The dialysis unit that MS was assigned to was woefully understaffed, and three other nurses had been called off of the floor, leaving MS to care for 14 patients. The medical records of the patient clearly showed that none of her actions led to his demise. The response also included a laundry list of mitigating factors, including letters of recommendation from colleagues and patients regarding MS's fitness to practice. After this effective advocacy by Bertolino LLP, the Texas Board of Nursing sent notice to MS that "based on the information we have received, there is not sufficient evidence for us to prove a violation of the Nursing Practice Act. Therefore, the investigation has been closed and the investigative file has been expunged from your record. No action will be taken by the Texas Board of Nursing in this matter."

Watch Out for Your License Renewal So You Stay Out of Trouble

by Troy Beaulieu, Esq.



We all lead busy lives and it's easy to forget your obligation to complete your license renewal and any associated continuing education or other requirements. However, the consequences for you, your business and your financial well-being can be very significant. It's important to have a system in place to make sure this obligation is completed in a timely manner. Lately our firm has seen many instances where a failure to renew a license resulted in a complaint or other serious consequences, so I wanted to address the topic. In this article I will discuss license renewal obligations, the connection to unlicensed activity laws which can lead to regulatory, civil, and even criminal consequences and what license holders should do to avoid these problems.

Make Sure You Renew Your License Timely

People who hold a state-issued license from their regulator usually have an obligation to renew that license after a period. Otherwise, the license will expire, and the person will no longer have an active license that allows them to practice their profession or occupation. Most state licensing agencies have legal provisions which make it clear the responsibility to renew timely and properly falls squarely with the license holder. The government may provide written reminders, but that does not obviate the license holder's responsibility, even if the government fails to provide an otherwise required renewal reminder notice. Therefore, it is crucial that licensed individuals have a system in place to track when their license will expire and provide enough lead time to complete the renewal process and satisfy any associated requirements. This often includes completing continuing education coursework, perhaps taking an examination, or completing other tasks that must be fulfilled and documented in connection with the license renewal. Failure to do so will prevent successful completion of the license renewal and it will instead expire and become invalid.

Complete Any Continuing Education or Other Obligations Sufficiently in

Advance of the Renewal Deadline So You Avoid Problems

I often see situations where license holders procrastinate on completing their continuing education obligations. It takes dedicated time to complete this coursework and while more coursework is available online and virtually these days, classes are not always available to take at the last moment. Sometimes the state agency will have specific course requirements, such as topics addressing ethics, jurisprudence, human trafficking, or other special issues germane to the specific industry. Those courses may have limited offerings or limited class openings, so plan to complete these requirements ahead of time. Agencies will usually have information about continuing education obligations posted on their website, which is a great resource for information. Most regulators will also have a contact center with dedicated staff who are available during business hours to answer questions about continuing education obligations. The main point to remember is to plan to complete your requirements so you avoid last-minute deadline problems.

What to Do If You Miss Your Renewal Deadline

If you miss your renewal deadline, do not avoid the issue. The last thing you want to do is pretend there is not a problem and continue practicing without a valid license. Immediately contact your regulator and take the steps necessary to complete your renewal. Most state agencies have a process that allows you to submit a late renewal, although they will typically charge you an additional fee because the submission is late. Some agencies have a tiered approach where the late fee increases the later in time the renewal is submitted. Most agencies have a cut-off period after which they will not accept a late renewal and in those instances, they usually require you to submit a new application from scratch like those who have never been licensed before.

Potential Consequences for Practicing with an Expired License

If your license has already expired, it is important you do not engage in activity that requires a license until you reactivate your license. Apart from regulatory consequences such as fines, disciplinary action or denying your late renewal request, you may also face a civil lawsuit by the government seeking civil fines, an injunction, attorney's fees, and potential criminal charges for engaging in unlicensed activity. You may also face serious felony criminal charges for activity associated with practicing without a license. For example, a health care-oriented license holder (doctor, nurse, physical therapist etc.) who practices without a license and bills insurance, Medicare or Medicaid could face criminal charges for insurance fraud or health care fraud under state or federal law.

Conclusion: Stay on Top of Your License Renewal to Avoid Regulatory, Civil and Even Criminal Legal Problems

Keeping your license renewal up to date without any lapse is important to avoid legal troubles. Do not procrastinate about completing requirements such as continuing education. Late renewal is often possible but can cost you more money and courses for continuing education are not always immediately available. If your license does expire, it is crucial to immediately address the problem and not just continue to practice. Continuing to practice when you do not have a valid license will expose you to regulatory, civil, and even criminal

legal consequences.

Side Bar ...

The Bertolino Government Regulatory Impact Scholarship



deadline is June 15, 2023. Visit [Bertolino Government Regulations Scholarship](#) for more information.

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

[Contact Us](#)

[Visit Our Website](#)

BERTOLINO LLP | (512) 476-5757 | 823 Congress Avenue, Suite 300, Austin, TX 78701
www.bertolinolaw.com | info@bertolinolaw.com