

# On The Record . . .

Official Newsletter of BERTOLINO LLP

July 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*

Cimone Murphree  
*Administrative Assistant*

## The Four (4) Most Important Truths to Know About Your Licensing Board Complaint

by Tony Bertolino, Esq.

You will likely feel upset and overwhelmed if you were to receive a board complaint against your license. Depending on the outcome of the licensing board's investigation and any ensuing disciplinary proceedings, you risk losing your license or being unable to continue working in your field, perhaps temporarily or even permanently. That said, and after defending license holders for over 20 years, I have noticed four very important truths that apply to every licensing board complaint.



### Truth #1: Your Licensing Board Agency Takes Complaints Very Seriously ... and So Should You

Many complaints that licensing boards and agencies receive are baseless, and some are downright frivolous. Other complaints may concern issues outside your licensing board's jurisdiction. However, no matter the content of the complaint, you must take it seriously, as your licensing board will take it seriously.

Don't be fooled into thinking that you can give a simple, apologetic explanation to a complaint and that your licensing board will automatically accept your explanation at face value. If your licensing board finds any indication that you may have violated a rule or law governing your profession, an investigator for the board will likely investigate the complaint

against you thoroughly. As a result, the investigator is likely to interview the complainant, you, and other witnesses who have information about the alleged incident. The investigator also may request certain documentation from you or other parties concerning the incident. Therefore, consulting with legal counsel before speaking to or turning over documents to an investigator is wise to avoid any missteps during the investigation that may raise additional questions with your licensing board.

### **Truth #2: Ignoring a Complaint is Never an Option**

Sometimes, you may think a complaint against you is so unjustified that you don't want to take the time to respond to it. However, not responding at all is a bad idea. Your licensing board won't assume that your silence means you did nothing wrong. Instead, the board will reach the opposite conclusion; it will assume that your silence means that you did something wrong or are admitting to the allegations against you. In fact, according to the procedures of many licensing boards and agencies, a persistent failure to respond to allegations of misconduct or complaints against you can result in the agency entering default findings and sanctions against you. In other words, the agency can find that you violated laws or rules as alleged without even having the chance to tell your side of the story. You also will receive sanctions for your alleged violations without any chance to present evidence on your behalf or argue your case. As a result, remaining silent will not help your case.

### **Truth #3: The Less You Say, the Better**

As human beings, particularly professionals, we tend to want to explain our actions when accused of wrongdoing. Therefore, your first “knee-jerk” reaction to receiving a complaint from your licensing agency is to explain yourself through a written response or by simply calling the investigator assigned to your case. However, you should always refrain

from doing so.

The fact is that your licensing board's job is to protect the public rather than advocate for you as a professional. When receiving a complaint, they must investigate whether you violated a rule or law about your profession, as the complainant has alleged. Giving them additional information that they don't already have may harm rather than help your case. Again, speaking with an attorney first is your best course of action. Otherwise, you may inadvertently admit to a violation of a law or rule that was not part of the original complaint or give the investigator evidence they can use against you in future disciplinary proceedings. The bottom line is that you may make defending yourself against misconduct allegations more difficult if you attempt to explain yourself.

#### **Truth #4: No Matter What Type of Complaint You Are Facing, You Need a Lawyer**

While you may think that you can adequately handle a disciplinary complaint that you have received on your own, the likelihood is that you can and should proceed only with legal assistance. You are likely not familiar with the agency rules and procedures for disciplinary proceedings before your licensing board. You may not understand what standard of proof you need to avoid a finding of misconduct and/or sanctions. You also may not know what evidence is helpful or not to produce in your case.

When you face disciplinary proceedings, your professional license, livelihood, career, and reputation are at stake. You have a better chance of overcoming a disciplinary complaint if you deal with it immediately and retain legal counsel from the outset of the proceedings. You cannot afford to wait or attempt to handle matters on your own with so much to lose if you are unsuccessful in defending yourself.

#### **Conclusion**

Facing a licensing board complaint can be daunting and potentially a career altering experience. However, understanding the four important truths about such complaints can greatly impact your ability to navigate the process effectively. Firstly, it is crucial to recognize that your licensing agency takes complaints seriously, necessitating your own serious approach to addressing the situation. Ignoring a complaint is never an option, as it can lead to unfavorable assumptions and default findings against you. Moreover, it is advisable to be cautious with your words and avoid providing unnecessary information, as it could inadvertently harm your case. Lastly, seeking the assistance of an experienced attorney is essential, considering the complex rules and procedures involved in disciplinary proceedings. By embracing these truths and taking proactive steps, you can improve your chances of successfully defending your professional license and safeguarding your career and reputation.

## Employee Spotlight



Celebrating a Decade of Dedication: Congratulations to Our Law Firm's Accounts Receivable Manager, London de la Teja, on Her 9 (technically 10!) Year Anniversary

I am delighted to recognize and congratulate an exceptional team member, London de la Teja, as she reaches her 9th employment anniversary with our law firm. This momentous occasion is a testament to London's unwavering commitment and the invaluable contributions she has made throughout her journey with me and the Bertolino Law Firm.

A decade ago, London embarked on her professional voyage with our law firm, first working as a "Temp" through a staffing agency. After a year working under a staffing contract, I made her an offer for a full-time employment position, and she enthusiastically accepted. Over the years, London has consistently demonstrated solid dedication and loyalty to our law firm and now oversees and manages our accounts receivable department. Her hard work, kindness, and generosity has not only earned the respect and trust of her peers but has also garnered a reputation for consistently delivering outstanding results for our clients. This is proven through the many Exit Interview responses that I received from our satisfied clients who have worked with London.

London is also an extrovert and has a remarkable ability to foster positive relationships and create a harmonious work environment. Her warm demeanor and friendly nature have undoubtedly played a significant role in building a strong sense of camaraderie with our law firm. In fact, in addition to her job responsibilities as our law firm's Accounts Receivable Manager, she is often the trusted "go-to" for planning parties and other firm-wide get togethers.

As we eagerly anticipate celebrating your 10-year milestone, we would like to express our sincere gratitude for your hard work, loyalty, and your unwavering commitment to the Bertolino Law Firm's success. Your embodiment of our law firm's core values truly makes you a shining example. Once again, congratulations on this remarkable accomplishment, London. Here's to the 9 incredible years and a future filled with even more triumphs!

-Tony R. Bertolino

## Hallmark Achievement

### Texas State Board of Pharmacy v. VV

**Facts:** Client hired firm after he realized that he may not be in compliance with his continuing education. He realized while renewing his license that he did not complete a certain course that he was supposed to complete. He was over a year late on his deadline to complete.



**Outcome:** Firm submitted a self-report in order to get ahead of any issue with TSBP. Firm argued that the deadline was not legally sufficient because the code did not include a deadline. The deadline was only listed on client's renewal documentation and that is not sufficient to create a statutory deadline. Further, the TSBP had no corresponding code section that allowed them to take disciplinary action based on client's conduct. Firm further argued that it would not be just to discipline client because he did not have true notice of the deadline. Firm counseled client to complete the course and submitted proof of completion and compliance to TSBP. After TSBP investigated they decided to take no action against client's license.

### Texas Medical Board v. OA

**Facts:** Client hired firm after receiving a complaint from TMB regarding fraudulent prescriptions, overprescribing and improper patient-provider relationship. TMB alleged that client was not treating patients appropriately and then overprescribing the patients after not meeting with them. There were over 70 patients and prescriptions at issue along with a corresponding investigation with another agency.



**Outcome:** After a response was submitted, TMB issued a notice for an informal

conference. During the conference the firm argued that the client was a victim of fraud. Her former employer fraudulently took her license and issued prescriptions without her consent or knowledge. Further regarding the patients, the firm argued that the client only met with the employer to discuss their process for treating patients and was never a treating physician at the time she reviewed patient charts. After the informal conference TMB dismissed the complaint.

---

### Texas Board of Architecture Examiners v. PA

**Facts:** Client hired firm after receiving a complaint from the TBAE. The complaint alleged that client was in violation of their rules by using the word “architect” in her title and practicing architecture without being a licensed architect. Client used the term “interior architect” as her position title even though she was not licensed.



**Outcome:** Firm submitted a response arguing that client did not designate herself with such title and it was her employer who referred to her in that way. Firm provided evidence that client’s title had been changed and her email signature, social media and publications had all been corrected. Firm argued that client had come into compliance and no further disciplinary action was needed in order to avoid future misconduct. TBAE dismissed the complaint and took no further action.

---

## Avoiding Trouble with Unlicensed Activity

by Troy Beaulieu, Esq.



A surprising portion of the time we see cases where a regulator is accusing someone of unlicensed activity. Unfortunately, this is not just a fringe few who have never held a license or been legitimately involved in an industry and are ignoring the law. Often these matters involve people who hold or have held a license, but now find themselves accused of doing something beyond what they are allowed to do. This article will discuss various aspects of unlicensed activity and what to be mindful of in terms of regulatory liability, civil lawsuits, and even potential criminal charges.

### What Is Unlicensed Activity and When Does It Arise?

Anytime someone engages in activity which requires a license but does not hold an active license in good standing, the person has probably engaged in unlicensed activity and could be subject to liability for the conduct. While regulatory agencies overseeing that industry or field typically take the lead in pursuing legal consequences, other government entities or private parties could become involved.

There are a variety of contexts where unlicensed activity may occur, but I have listed the more common situations here:

- Forgetting to renew your license timely and operating with an expired license;
- Engaging in activity beyond the scope of your license type and doing work that requires a different type / level of license;
- Engaging in activity that requires a license while your license is currently suspended, restricted or otherwise limited;
- Conducting activity that requires a license when your application for a license is pending and has not yet been approved and issued;
- Doing work as an apprentice, trainee, or other type of applicant-in-training without the required level of supervision; and,
- Inappropriate delegation of work to subordinates and/or paraprofessionals who end up doing unlicensed professional work.

### **How Can Regulators Take Action Against Unlicensed Activity?**

Regulators can employ a variety of legal tools to address unlicensed activity such as:

- Cease and Desist Orders – A written order from the regulatory agency requiring you to stop engaging in certain activities the regulator contends constitute unlicensed activity;
- Restitution – The regulator can issue a written order requiring you to pay back funds obtained from clients or the public who paid for services the regulator claims constituted unlicensed activity;
- Administrative Penalties – Regulators can often issue a written order requiring you to pay them an administrative penalty. Unlike restitution which goes to consumers, administrative penalties are paid directly to the assigned agency, and often then delivered to the Legislature’s general revenue fund. Usually, the law allows the agency to recover an administrative penalty for each separate day the violation continues to take place;
- Denial of an Application for Licensure – Often regulators also have the authority to deny an application for licensure based upon activity that requires a license which took place prior to obtaining an actual license.

### **What Civil Liability Risks Are There for Unlicensed Activity?**

In addition to regulatory liability, unlicensed activity can also result in the government or private individuals filing civil lawsuits. When the government files suit, it is typically done by the Texas Attorney General’s Office on behalf of the regulatory agency which has oversight for that industry or license. Typical lawsuits include a request for an injunction (a written order issued by a judge) instructing someone to cease doing certain activity (usually specific activity the government believes constitutes unlicensed activity), a request for civil penalties authorized by law (usually a specific amount for each day a violation continues) and the recovery of reasonable and necessary attorney’s fees for having to file the lawsuit.

When a private lawsuit is filed, this may include claims for fraud, negligent oversight of employees, breach of warranty, deceptive trade practices or other case-specific legal claims. The private parties who file these lawsuits may seek restitution for money they have paid, recovery of their costs and reasonable and necessary attorney's fees if allowed under the law.

### **What Type of Criminal Liability Exists for Unlicensed Activity?**

Engaging in unlicensed activity can also lead to criminal liability. Most state regulatory enabling statutes have provisions that make engaging in activity that requires a license a misdemeanor criminal offense that may be prosecuted by the local district or county attorney. Sometimes the law can even make it a felony, such as with unlicensed insurance activity. In addition, if the activity involves the submission of healthcare reimbursement claims, Texas Penal Code Chapter 35A (health care fraud), provides for potential felony charges if a health care provider knowingly or intentionally submits claims for individuals who do not hold a valid license to practice at the time the services were rendered.

### **What Can You Do to Avoid Trouble?**

To avoid any unlicensed activity problems, always make sure you are aware of what the licensure requirements are for a particular industry or area of practice. If you are not sure, get legal advice so you don't make a misstep that exposes to legal risks. If you are in the process of applying for a license, be sure to avoid engaging in any activity that requires a license and if you hold an apprentice, trainee, or other type of applicant-in-training credential, make sure you fully comply with the restrictions that limited authorization to practice places on your permitted activities. This typically involves working only under the supervision of a person already licensed who has agreed to oversee your work and often requires a formal relationship between you (the supervisee) and the licensed person (the supervisor). For those who hold a license, make sure you know when your license expires and the process for renewing it, including timely completion of any continuing education or other requirements. Do not wait to the last minute to renew your license so you have plenty of time in case issues arise or there is an agency delay in processing your renewal. Also, be aware of any suspension, limitations or restrictions that have been placed on your license by your regulator.

### **What To Remember About the Risks of Unlicensed Activity**

Overall, remember that regulated industries have licensure requirements, and it is critical to know what those licensure boundaries are to avoid exposure to unlicensed activity consequences. Unlicensed activity exposes you to not just regulatory problems but could also result in civil lawsuits being filed against you or even criminal charges being filed. If you are already licensed, know what your renewal obligations, employee oversight requirements are and any limitations on your license so that you do not practice outside the bounds of your license. If you do not have a license or your license has expired or been suspended, make sure to refrain from practicing until you have acquired, renewed, or reactivated your license. Taking some additional time to know this important area of the industry you work in will go a long way towards minimizing your risk and exposure to legal liability.



## Side Bar ...

BERTOLINO LLP is pleased we had the opportunity to present at TXCPA Austin's annual Free CPA Expo on June 20, 2023. The event was held at the TCEA Conference Center in South Austin. Bertolino Law Firm Associate Kerry Bloodsaw gave an outstanding presentation which was well received by a robust audience of attendees interested in learning about the do's and don'ts for protecting your CPA license with the Board. The Firm appreciates the chance to speak with accountants about the complaint process and share thoughts on how to reduce the risks associated with a complaint from the Texas Board of Public Accountancy.



Did you know that Bertolino Law Firm provides free trade group presentations? If you are a license holder in healthcare, real estate, insurance, accounting, education, or another industry and want to learn more about topics that impact people licensed and regulated by the government, our Firm can provide your group with free legal education. [Contact us](#) to speak with a team member about this free opportunity to get educated on the regulatory world that impacts your industry and license.

[Contact Us](#)

[Visit Our Website](#)

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