

On The Record . . .

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I Know Who Complained About Me to The Licensing Boards. Should I confront Them to Resolve the Matter?

by Tony Bertolino, Esq.

Receiving notice that a complaint has been filed against you with your licensing board can be devastating. The fact is that even a single complaint can put your license, livelihood, and reputation at risk.



Texas licensing agencies and boards can take various disciplinary actions against you, including license revocation, suspension, or probation. With so much at stake, we urge you to seek experienced legal counsel soon as you are notified of a complaint.

Your emotions are likely to run high when you face a disciplinary complaint, and as a result, you may be under great stress. Our natural inclination as humans is to explain ourselves when confronted with accusations of wrongdoing and try to resolve the issue. You may think you can persuade them to drop their complaint if you can tell your side of the story, or you may feel the need to express your frustration over their actions. However, regardless of your motivations, you generally should avoid discussing a disciplinary complaint with the person who filed a complaint against you. I have explained the reasons below.

Confronting the Complainant May Harm Your Defense

The person who filed the disciplinary

complaint against you did so for a specific reason. As a result, that person may feel resentment, justification, anger, hurt, frustration, and other emotions toward you at the current time. Therefore, any conversation with the person will likely be heated and unproductive. Any attempts at conversation could quickly devolve into a heated argument that does your case more harm than good. From that perspective, speaking to the complainant is unlikely to resolve or convince them to withdraw their complaint.

Furthermore, you may make statements against your interest, inadvertently hurt your case, or give the complainant more evidence to use against you. For instance, you may reveal additional information that the complainant, and your disciplinary board, didn't already know about. Divulging this information, no matter how unintentional, can harm your defense. If this situation occurs, you could have a less favorable outcome.

The complainant and your licensing board may view your encounter as an attempt to intimidate or harass the complainant. Even when your intentions are good, emotions can easily get the best of you, and you may say something you regret. If your disciplinary board finds that you have acted inappropriately toward the complaining party, you could face additional disciplinary violations.

Only Conversations with Your Attorney Are Covered by the Attorney-Client Privilege

Discussions about your disciplinary complaint with the complainant - or anyone else, for that matter - are not covered by the attorney-client privilege. Therefore, the complainant or any other third party has no duty to keep your conversation or anything that you say confidential. Anything you say to anyone other than your attorney can be disclosed to your disciplinary board and used against you in your disciplinary proceedings.

In contrast, attorney-client privilege covers anything you say or discuss with your professional license defense lawyer. Confidentiality rules that govern the relationship between lawyer and client protect you and allow you to say anything to your lawyer without fear of it being divulged or repeated to anyone else. Therefore, even if you admit some misconduct to your lawyer (with a few rare exceptions or circumstances), they cannot tell anyone else what you said.

If a third-party claims that you must discuss certain information about the incident that is the basis for the disciplinary complaint against you, such as your employer or malpractice insurance carrier, you should talk to your attorney first. Only your lawyer can properly advise you of your rights regarding discussing the incident and what you must and need not disclose.

Follow Your Attorney's Instructions

If you insist on speaking to the complainant, you only should do so after consulting your attorney. Although your attorney is unlikely to advise you to ever communicate with the complaining witness in your disciplinary case, they may give you some advice about doing so if appropriate. In any case, you should follow your attorney's advice to maximize your chances of a positive outcome.

Be mindful of what you say and do after receiving a complaint notice. And remember that every choice you make can either help or harm your case.

Employee Spotlight: Jasen Dalus

In August, Team Bertolino welcomed Jasen Dalus as our new Client Success Liaison. Jasen is the primary point of contact for all potential new clients and is responsible for building strong relationships and guiding our new clients through the Firm's onboarding process.



Here are a few fun facts about our newest team member.

My nickname: It's a funny one, but "Hundo". When I was 18, all I would talk about was hitting my first \$100,000 in income in a 12-month period. Hitting \$100,000 to me is more than the money but the realization that if you put your mind to something, it is achievable. No matter how long it takes.

I am skilled at: Portraiture photography and playing a little piano. Also being creative when it comes to marketing.

On the weekends and in my free time I am often: Working on my business and finding ways to sharpen my people skills, sales skills, and leadership skills. On the other hand, I like spending quality time with my wife.

Number one on my bucket list: Going on a tour of Europe with my wife.

The best sweet or salty snack: The best snack to me is a brookie. A brownie/cookie dessert. I love brownies!

Best movie ever: Wolf of Wall Street

My favorite candy: Snickers

My favorite sports teams: Miami Heat

If I had a theme song that played every time I walk into the office it would be: All About the Benjamins - Puff Daddy

People say I look like: Not too sure honestly.

The best part of my job: talking to new people every day and being able to help them find solutions to their problems. I love being able to hear the relief on the other end when they realized they called the right team for the task.

Hallmark Achievement

Texas State Board of Public Accountancy v. SW

Facts: Our client, SW, hired us to help him self-report a criminal history matter threatening his ability to continue pursuing his license as a certified public accountant. SW had been charged with and plead guilty to a criminal offense that had the potential to derail his efforts to become a certified public accountant. He needed an aggressive law firm to advocate for him and explain to the Board why he should be allowed to continue his journey towards licensure.



Outcome: The Firm collected and evaluated the documentation needed to explain the circumstances of the criminal matter and demonstrate why the Board should not prevent SW from moving forward with his examinations and application for licensure. The self-report packet we submitted demonstrated why this one-time error in judgment did not require the Board to deny SW his opportunity for licensure and how the offense did not relate to

the work of a certified public accountant. After the Board completed their investigation, they agreed the criminal matter should not impede our client from moving forward with the licensure process. With the Board's approval now obtained, SW could move forward with completing his examinations and the remainder of the application process. He was back on track to achieving his dream of becoming licensed and continuing the accounting work he has a strong passion for doing.

Texas Medical Board v. EM

Facts: Client hired firm after submitting an application for licensure. He received an investigative inquiry from TMB regarding his application and prior criminal convictions. Client was convicted of assault over 20 years ago and he did not fully disclose the conviction.



Outcome: Firm submitted an amendment to client's application and explained the conviction along with describing client's character since the event. The firm provided certified records with the supplement and argued that the prior conviction was no longer relevant to client's current work as a physician assistant. After receipt of the amendment TMB approved the client's application and issued him a license.

What Are Regulatory Agency Rules and Laws and How Do They Impact Your License?

by Troy Beaulieu, Esq.



Agency Rulemaking and the Legislative Processes Directly Impact Your License, Livelihood and Career

Many people who hold a license issued by the state for their work do not have a strong sense of how the rulemaking and legislative processes work and impact the license they use every day for their livelihood, and career. This article will discuss how Texas regulatory agencies operate and promulgate rules based on the laws passed by the Texas Legislature. Federal regulatory law is distinct and although similar and sometimes intersecting with Texas law, we will focus on Texas in this article.

State Regulatory Agencies Get Created by the Texas Legislature Through Passage of a Legislative Bill

The legislative process is how laws get passed in Texas. This occurs usually every two years when the Legislature meets for 140 days (from the second Tuesday in January through May in odd numbered years). The legislative process is sandwiched between two other components in a general hierarchy of legal authorities:

(1) the Constitution is supreme and surpasses any conflicting state laws of rules;

(2) Texas laws (passed by the Legislature); and,

(3) Texas agency rules (created by state regulatory agencies)

You can learn more about the process of creating laws by reviewing the “Legislative Process” section on the righthand side of the [Legislature’s website](#), a quarter of the way down the page. Remember that to be legitimate, laws and agency rules must not violate the Constitution and any agency rules must also be drafted in conformity with the laws passed by the Legislature.

Except for a few constitutionally created government agencies, the Texas Legislature creates all state agencies and spells out in their “enabling statute” what powers, duties, and responsibilities they have. The law outlines the agency’s jurisdiction and limits what they are allowed to do. Generally, regulatory agencies only have those powers the Legislature has specifically indicated, and the agency cannot promulgate rules that exceed or are contrary to the laws the Legislature has passed. When agencies go beyond their authority, they can face legal consequences. The law typically specifies the rulemaking authority the agency is given to issue agency rules. Agency rules usually have the full force and effect of law so long as they were passed properly, doing so is within the agency’s authority and they are not unconstitutional.

State Regulatory Agencies Are Usually Tasked with Overseeing Proper Implementation, Execution and Enforcement of the Laws Created by the Legislature

Once the Legislature has created a regulatory agency, the agency has limited rulemaking authority so it can administer and enforce the area of law it has been charged with managing. This management process often involves enforcement action by the regulatory agency based upon complaints received, investigations and audits performed, and other mechanisms employed to ensure people are following the law. The agency usually has the authority to take action against people not complying with the law and rules, including imposing administrative penalties, and taking disciplinary action against the license holder. Often, the agency is seen as the expert in that industry because their focus is on that unique type of occupation, profession or industry. As a result, courts may sometimes defer to the agency’s views or interpretations of laws when there is uncertainty or ambiguity about what it means.

The Rulemaking Process Gives Citizens the Chance to Have Their Voice Heard

Regulatory agencies go through a detailed process for developing and implementing their rules. The rules typically fill in the gaps left by the broader legal provisions issued by the legislature. The rules must be within the ambit of their legislative authority, not be contrary to state laws passed by the Legislature or the Constitution and must go through the development process so that the public can participate, provide feedback, and have their voice heard. At least two agency-wide meetings will be held where the agency’s rulemaking body (typically a Board, Commission or Council) will first propose the rule and then come back several months later and act on the proposed rule (reject it, modify it or adopt it) based upon citizen feedback. These meetings are usually open to the public under the Texas Open Meetings Act. This

process results in publication of the rule language online and a notice and comment period for the public to evaluate it and provide their feedback on the proposed rule. People can view all Texas agency rule proposals on the Texas Secretary of State's website by looking at the Texas Register, which is a weekly online publication aggregating all the various agency rules being considered.

Often, prior to the first full agency-wide meeting, the rule has been considered in a smaller group setting like a subcommittee or working group made up of agency staff and often members of the industry, or the public. This is where the real detailed work takes place on why the rule is needed, what it will say and how it will operate. These meetings are usually open to the public to attend and provide public commentary and feedback. This way, any draft rule that comes before the agency will have already been given careful consideration.

Conclusion

The agency rulemaking and legislative processes are critical components of the state regulatory process. Both have significant impact on the licenses issued by state regulators. Regulatory agencies get their directives from the Legislature about the scope and extent of the agency's obligations and authority for enforcing the law. The agency may only promulgate rules within the ambit of their constitutional and legislatively prescribed authority. Citizens can provide comments on proposed rules before the agency decides to make any decision on them.

Save Money on Legal Fees: How to Save Costs When Sending Files

Part 2 in a series by London de la Teja, AR Manager

A great way to save costs during your legal matter is to provide your documents collectively at one time rather than sending them over an extended period. When you send them over an extended period, it requires the legal team staff to follow up, circle back and re-adjust file documentation to be submitted to the client's regulator. This can cause a lot of unnecessary billing that can be avoided. By sending your documents all at once it will eliminate these costs.



This dynamic occurs for a variety of factors such as:

- (1) Some agencies require distinguishing and segregating work file versus non-work file documentation. Having non-aggregated documentation that is submitted over an extended time makes it difficult for staff to distinguish between different types of documentation and ensure the work file versus non-work file documentation are kept separate for submission to the client's regulatory agency;
- (2) Some documents are of a similar nature or type (example - character reference letters) and will be used in a particular location or way in the response. When we do not have them aggregated from the beginning this

requires additional legal staff work to harness their full potential benefit for the client;

(3) Integrating later sent documents after portions of the complaint response addressing those same types of documents have already been drafted often requires reshuffling that portion of the response, relabeling the exhibits (to account for the additional ones submitted), and adjusting the language, quotations, arguments and references within the complaint response prose to account for recently received or additional documentation. Having all of this material at once, and up front, allows for a smoother response drafting process that minimizes the need to go back and make adjustments to the written submission and attached exhibits.

Side Bar ...

Bertolino Law Firm Extends Sponsorship to Honor Veterans at 8th Annual Veterans Day 5K Run

Bertolino Law Firm is thrilled to announce our proud, ongoing sponsorship of THE Veterans Day 5K. This annual event, now in its eight year, aims to bring together communities in a joyful celebration of our veterans' unwavering dedication while providing for community needs.

THE Veterans Day 5K will be held on Saturday, November 11th starting at 8:30am at Fritz Park, 400 Park Ave, Hutto, TX 78634.

For running enthusiasts seeking to test their limits and set new personal records, THE Veterans Day 5K promises an exhilarating experience, complete with chip-timed precision to ensure accurate race results. But it's not just the competitive runners who are encouraged to participate. The event warmly welcomes individuals of all fitness levels, including families and fun-run aficionados, to join in the festivities and show their support for our veterans.

Every registered participant will receive a commemorative event t-shirt and each runner who crosses the finish line will receive a distinctive finisher medal, a tangible token of appreciation for their contribution to this remarkable event.

There will be an onsite collection of toys for The Marine Corp Toys for Tots Program, as well as non-perishable food donations to benefit the Round Rock Area Serving Center to assist families in need during the holidays.

Please visit [THE Veterans Day 5K](#) for more information and to register today!



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