

On The Record . . .

Official Newsletter of BERTOLINO LLP

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What Is an Agreed Board Order and How Do They Work?

by Tony Bertolino, Esq.

As a licensed professional, your licensing regulatory board or agency can assess various sanctions against you if you have violated the rules or laws governing your profession. When facing disciplinary proceedings, you need to be aware of and understand the potential range of consequences that you may face, including agreed board orders.



When you are facing a professional disciplinary complaint, Texas licensing agencies typically allow you to resolve your complaint informally by agreement rather than proceeding to a contested (and costly) hearing and formal sanction. In many cases, this informal resolution by agreement takes the form of an Agreed Board Order. Most disciplinary complaints are resolved in this matter. However, comparatively small number of complaints cannot be resolved by agreement and must proceed to a contested hearing, usually in cases that involve allegations of severe misconduct.

Defining the Agreed Board Order

The Texas Medical Board (TMB) is a good, general example of a licensing board that frequently uses Agreed Board Orders. When the TMB notifies you of a disciplinary complaint, you can respond to the allegations against your medical license. Once the agency has received your response, it may provide you with an Agreed Board Order, which is an

agreement that imposes some degree of disciplinary action based on the severity of the alleged violation(s) of the rules and laws that govern your medical profession. For instance, an Agreed Board Order could contain one or more of the following provisions, as well as others:

- Restrictions from performing certain procedures or practices.
- Completion of additional training or continuing medical education courses.
- Imposition of a medical practice monitor or chart monitor.
- Periodic compliance appearances before the TMB.
- Participation in rehabilitation or behavioral health programs.
- Mandatory drug testing and/or abstention from drugs and alcohol.
- Referral to the Texas Physician Health Program.
- Payment of an administrative penalty.
- Issuance of a public reprimand.
- Probated license suspension or revocation.
- License suspension or revocation.

If you accept the terms of an Agreed Board Order, licensing board staff must present it to the entire TMB for approval. If approved, the Order becomes final, subjecting you to its provisions. However, the TMB also has the option of approving the Agreed Board Order with some modifications or rejecting the Agreed Board Order altogether. If the TMB rejects the Agreed Board Order, you must likely proceed to a contested hearing to resolve your disciplinary complaint.

The Impact

An Agreed Board Order is a disciplinary action that becomes a permanent part of your professional disciplinary file. Many licensing agencies will also report it on their applicable website so the public can freely view it and have knowledge that you have been subject to discipline. Furthermore, if you fail to abide by the provisions of the Agreed Board Order,

you can be subject to noncompliance proceedings by the Board. As a result, you could face further and more severe disciplinary action because of failing to follow the Agreed Board Order. As such, the repercussions of failing to comply with an Agreed Board Order can be significant.

Should I Agree and Sign?

Every situation is different, and the provisions in an Agreed Board Order can vary widely. An Agreed Board Order is a permanent part of your professional license record, so your decision to sign it is not one to take lightly. Licensing agencies often default to them, which takes the fewest resources to resolve a disciplinary complaint. However, that doesn't always mean it is your best option. While having a disciplinary complaint and investigation hanging over your head is stressful, you should not necessarily sign an Agreed Board Order to get it over with quickly. An Agreed Board Order may limit your future employment prospects, so you must ensure that it is the best way to resolve your complaint before signing it.

Bertolino LLP Launches “Know Your Regulator”

A Free, Informational Bulletin Tailored to Your Regulated Industry



Your industry is constantly changing, and you need to be in the know to stay ahead of your competition. To help license holders meet this challenge, Bertolino LLP is excited to announce it has launched a free, educational update to keep license holders informed of the ever-changing laws, rules, regulations and legal

interpretations that impact their livelihood and businesses.

Subscribe for this free, periodic, informational service to stay current on what's happening in the regulatory world impacting your industry.

Employee Spotlight: Melissa "MJ" Hooper

Celebrating Melissa “MJ” Hooper’s One Year of

Exceptional Paralegal Support at Bertolino LLP

I am thrilled to announce the one-year work anniversary of one of our dedicated certified paralegals, Melissa "MJ" Hooper, who has been a vital member of our legal support team.



Over the past year, MJ has consistently demonstrated dedication and a strong work ethic. More specifically, she has proven to be extremely reliable, detail oriented and always willing to go the extra mile above and beyond her role as a Certified Paralegal.

I take great pride in MJ's accomplishments during her first year with us and look forward to her continued growth and ongoing contributions. As always, the Bertolino Law Firm remains dedicated to providing top notch legal services, with support staff like MJ continuing to play a vital role in ensuring that our clients' needs are met with the utmost professionalism and care.

Please join us in commemorating MJ's one-year work anniversary.

Thank you, MJ. We really appreciate all that you do!!!

-Tony R. Bertolino

Hallmark Achievements

Texas Education Agency/State Board of Educator Certification v. SF



Facts: SF engaged our Firm to defend her 28-year career against allegations of neglect and abuse of a child. Our client faced revocation of her credentials, limited employability and damage to her highly regarded reputation as an educator.

Outcome: The Firm evaluated the available evidence and submitted a robust response addressing both the facts and applicable law. We demonstrated that the allegations were baseless. Upon conclusion of the investigation, the Agency dismissed the complaint and immediately removed the inquiry notice from the State Board of Educator Certification's website. Our client was able to return to the classroom and the career that she loves.

Texas Medical Board v. LA



Facts: Client hired Firm after receiving a complaint from TMB regarding failure to care for nine patients over a five-day period. TMB alleged that client was not providing the required care to these patients over several days. They also alleged that client did not document any care that was provided and did not document why treatment was not provided. TMB issued

an expert report finding that client failed to meet the standard of care.

Outcome: After a response was submitted, TMB issued a notice for an informal conference. During the conference, the Firm argued that client did not provide care due to a break in her mental health. The Firm provided evidence that client was suffering from depression, anxiety and PTSD brought on by the COVID-19 pandemic. These issues were then exacerbated by a death in client's family 4 days prior to her failure to treat. Client admitted wrongdoing and Firm provided evidence of the corrective action client has since taken after this incident. TMB agreed to dismiss the matter with a non-disciplinary order and a referral to a mental health program.

Texas Appraiser Licensing and Certification Board v. TF



Facts: Client hired Firm after receiving a complaint from TMB alleging that she prescribed a controlled substance to a family member. The evidence showed that client had been prescribing her husband a controlled substance for over 10 years.

Outcome: Firm submitted a response to TMB regarding the allegations and argued that client's conduct was isolated in nature and still within the standard of care. The Firm provided evidence of several other practitioners who prescribed the same controlled substance to her husband. Thereby proving that the controlled substance was medically necessary. The Firm also provided evidence of a report conducted by another provider demonstrating that her husband was not misusing or abusing the controlled substance. Based on the provided evidence, TMB found no need for an ISC and issued client a non-disciplinary order.

Why You Need to Stay Aware of What's Going on In Your Regulated Industry

by Troy Beaulieu, Esq.



Change is a Constant in Today's Fast-Paced World

We all know that today's fast-paced information and technology-driven world can change your industry in an instant. Today's news broadcasts are full of examples where competitors lost out because of a new disruptor who has entered the marketplace with information, ideas or approaches others had not considered. Key to remaining competitive in this dynamic is knowledge and information, especially about developments in the regulatory world impacting your license, industry, business, profession, and career. And this is not just to keep you out of trouble with your regulator (although that's important), but it also allows you to stay ahead of your competition based on changes in the law that impact how you operate, what you can or cannot do and areas for potential growth and innovation. In this article we will discuss how staying aware of changes in the law impacting your business affects your career and is an important component of staying competitive, innovative, and growth-oriented in your

industry.

Stay Ahead of Change in Your Regulated Industry to Stay on Top of Your Career

Your industry is constantly changing. One important component of that change dynamic is changes in the law and the regulatory environment that influences your license and the business you operate. Information and knowledge about these fast-paced and impactful changes is critical to staying ahead of your marketplace competitors, keeping current clients happy and drawing new market share by remaining innovative. As technology develops, and new business models arise, you need to know what is changing with the laws and rules regarding your license and business. Opportunities for innovation, new ways of operating, new technologies and other developments are molded by interpretations and applications made by your regulatory agency, the legislature, and the courts. These critical dynamics shape what you can do with your license and how you operate your business. Without this key information, you will lag behind competitors and be limited in the growth potential of your business.

You Need Attorneys Knowledgeable About the Changing Regulatory Landscape

In a complex regulatory world where the law is constantly evolving, you need lawyers who stay on top of exactly what is developing in your unique industry. The state legislature and federal congress are constantly making changes to the laws. Your regulator is quarterly making changes to the rules and regulations governing your industry. State and federal courts are regularly issuing decisions that interpret and apply the laws and rules issued by these other two branches of government. As you innovate, expand your market share with new business ideas, and develop new ways of operating, you need sound legal advice about how these new aspects of your business fit within the law. You need solid legal counsel on how you can achieve your goals without accidentally exposing yourself to liability and compliance problems. Having attorneys experienced with regulatory compliance and administrative law lets you focus on running your business. And if you do receive a complaint, having attorneys knowledgeable about the law and legal process gives you peace of mind to navigate the regulatory process and achieve the best possible outcome.

What Should You Do to Stay Aware and Keep Ahead of Competitors in a Dynamic Regulatory Landscape?

- **Hire the right law firm.** Whether you want to avoid compliance problems or just received notice of a complaint, you need the right lawyers to represent you. You need attorneys with experience handling administrative law matters and defending people and their businesses when under attack from your regulator. Bertolino LLP is here to do just that. With our unique experience, background, and knowledge, we are poised to help protect your license and aid you in maintaining regulatory compliance so you can focus on your career and business.
- **Subscribe to the Free Bertolino Know Your Regulator Information Service.** Bertolino LLP provides a free, industry-specific, regulatory oriented newsletter that shares critical information with license holders about

proposals, and actual changes to the laws, rules, regulations, and court decisions and how these developments may impact you and your business. Subscribe today by sending an e-mail to: knowyourregulator@bertolinolaw.com.

- **Sign up to receive updates from your regulator.** Some regulatory agencies provide updates, and other key information to license holders. Most agencies have information on their website about how to subscribe if they offer this service.
- **Get involved with your regulatory agency.** Participate in your regulator's open meetings. Review their website. Get involved in subcommittees and working group activities where the groundwork is often laid for new rules, policies or proposed legislative changes. Join a trade group or professional organization. Learn more about these and other opportunities for getting involved by reading *[How I Can Take More Control of my Professional Life Through Involvement in My Regulated Industry](#)*

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

Part 3 in a series by London de la Teja, AR Manager

A great way to assist with your matter is to anticipate the materials the legal team will need and provide them proactively and timely. By staying ahead, this will prevent the legal team from having to reach back out and follow up. Each time the legal team must call or e-mail you regarding needed items, can cause your bill to increase. By being proactive with your case matter, you can really help things move along quicker.



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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