

On The Record . . .

Official Newsletter of BERTOLINO LLP

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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 Bloodsaw, Esq.
Associate Attorney

London de la Teja
Accounts Receivable Manager

Penny Smith
Certified Paralegal

Melissa Hooper
Certified Paralegal

Cimone Murphree
Administrative Assistant

Jasen Dalus
Client Success Liaison

Defense Strategies in Your Professional Disciplinary Proceedings

by Tony Bertolino, Esq.

As a licensed professional in Texas, you are subject to various laws and rules that your licensing agency or board enforces. Failure to follow these laws may result in complaints against you, which, in turn, may lead to disciplinary proceedings. The sanctions you can receive because of these proceedings can be severe and devastating for your career and livelihood. The most serious cases may impair your ability to work in your profession in the future.



Seek a Dismissal of the Complaint at the Outset of Your Case

One of the most effective ways to defend against a disciplinary complaint is to aggressively push for dismissal before your licensing board files formal disciplinary proceedings against you. Suppose you can provide sufficient evidence from the outset of your case that you did not violate the rules or laws as alleged in the complaint. In that case, the licensing board may be more apt to dismiss the complaint without further investigation. In contrast, once your licensing board has spent time and resources investigating the complaint, gathering evidence, and filing a formal disciplinary complaint against you, the licensing board may be less likely to

dismiss the complaint summarily.

Get Legal Advice Before Responding to the Complaint

One mistake that many professional licensees make is to immediately respond to a complaint against them on their own without getting legal advice or guidance. These professionals often assume they can easily overcome the allegations against them without legal assistance. However, proceeding on your own is rarely the best course of action.

Even when the allegations in the complaint appear far-fetched and frivolous, you should still take the complaint seriously. As a result, you should contact an experienced attorney as soon as you become aware of the complaint. By allowing an attorney to advise you and help you formulate an answer, you can put yourself in a better position to resolve the complaint before your licensing board formally files disciplinary charges against you. You can avoid providing details or evidence to your licensing board that they may not already possess and refrain from inadvertently admitting to a violation of the rules or law.

Know What to Expect at an Informal Conference

Many licensing boards that pursue disciplinary action against licensees start by holding an informal conference to try and resolve the matter without needing a formal hearing. In many cases, the board, or a panel of the board, will prepare a proposed finding of violation(s) and sanction(s) based on the recommendations of board staff. The licensee, their attorney, board staff, and other board representatives will meet to discuss the case and determine whether the proposal is appropriate to resolve the complaint. The board can still dismiss the complaint at this point or request an administrative hearing for resolution if the parties cannot reach an agreement. In any event, having the assistance of an

attorney to help you present your case and the evidence to support your position before the board can be crucial. Even at this point in the disciplinary process, you may be able to avoid formal proceedings and obtain a dismissal of the case.

Focus on the Sanctions Rather than the Violation

If the evidence is clear that you did violate a rule or law governing your profession, you may want to focus your efforts on minimizing the resulting sanctions you may face. An attorney is best suited to advise you if and when this defense strategy becomes appropriate.

For example, most board rules or laws list aggravating and mitigating factors that the licensing board must weigh in determining the appropriate sanction for a particular violation. Many licensing boards follow a schedule of sanctions that is designed to let licensees know what sanctions to expect if they commit specific violations. However, licensing boards almost always have some discretion regarding the sanctions they impose for most violations, so presenting evidence of mitigating factors can be highly effective in reducing the sanctions you may face. While licensing boards likely have to explain any deviations they make from the schedule of sanctions, you can make it easier for them to do so by providing strong evidence of mitigating factors that may justify a lesser sanction in your case.

Employee Spotlight: Troy Beaulieu

Celebrating Two Years of Excellence: A Heartfelt Thank You to Troy Beaulieu, Director of Legal Services

I am delighted to take a moment to express my sincere gratitude and appreciation for the invaluable contributions of our Director of Legal Services, Troy Beaulieu. On November 29, 2021, Troy joined our law firm, bringing with him a wealth of knowledge and experience that he gained while working for many years in Enforcement at the Texas Appraiser Licensing & Certification Board.



Over the past two years, Troy has demonstrated exceptional leadership of our law firm's legal department and a deep understanding of the legal landscape of professional and occupational license defense. Undoubtedly, his work has significantly impacted the success of our firm. His strategic vision and tireless efforts have been instrumental in shaping the direction of our legal services, leading to numerous case file achievements and client successes.

Troy's commitment to excellence has not only strengthened our legal team but has also fostered a collaborative and supportive work environment. His leadership style, characterized by professionalism and approachability, has inspired our team to reach new heights and has created a positive atmosphere that we all appreciate.

As we mark this two-year anniversary of Troy's employment at our law firm, I want to extend my heartfelt thanks for his hard work, dedication, and positive impact on our legal department. Troy, your contributions have been instrumental in our success, and I am fortunate to have you as a leader in our team.

Please join me in congratulating Troy Beaulieu. Here's to two years of achievements and to many more to come as we continue to thrive under his exceptional leadership!

-Tony R. Bertolino, Managing Partner

Hallmark Achievements

Texas Board of Public Accountancy v. AP

Facts: Client hired firm after receiving a complaint from the Board regarding cheating, sharing answers and/or providing false information to the Board and testing examiners during her time with a prior employer. The employer was being investigated for allowing the behavior to occur and client's name was discussed during the Board's initial investigation into the employer.



Outcome: The firm provided a response to the complaint arguing that during the time of the allegations, client was not even licensed with the Board. Evidence was provided that client never cheated or shared answers on any exam and that she only provided, on an isolated occasion, answers to an internal training course with her employer. She provided answers to the training to another coworker. Further evidence was provided that client had no knowledge of whether that employee used her answers for the training as submitted continuing education credit with the Board. Based on our response and corroborating evidence, the Board dismissed the complaint and took no further action against client's license.

Texas Education Agency v. RR

Facts: Client was arrested for DWI and plead guilty to the modified felony offense of evading arrest. She was placed on probation for 8 years. TEA initiated an investigation and offered client a disciplinary order suspending her license for the period of time she would be on probation. Client rejected the offer, requested a trial and retained the firm. After discussing the mandatory sanction requirements based on her probationary term, the firm negotiated with TEA regarding a surrender.



Outcome: Client's employer was aware of her conviction and still supported her as an educator. Based on Texas law, teachers are not required to hold a license to teach in a public school. The school has the discretion to hire unlicensed educators if they so desire. The firm provided evidence and argument that supported TEA modifying their offer and allowing client to surrender her license. A surrender would allow her to continue to teach and work, unlike a suspension, that would suspend her ability to teach in any public school regardless of licensure. Client was able to keep her job and will be able to reapply for licensure in 5 years.

Texas Board of Nursing v. GA

Facts: Client received a complaint from BON after a patient reported that she failed to discuss severe blood test results leading to an emergency room visit. The patient alleged that after his results were issued, client never called him and he ended up having to report to the emergency room for several days due to low blood sugar.



Outcome: After client provided an initial response and received an order of direct supervision and monitoring, she rejected the order and retained the firm. Formal charges were filed against client and firm provided an answer to the charges. Within the answer the firm argued that client never received the blood test results and advised the patient prior to sending the tests in that the practice he was choosing never faxed the records to client's facility on time. Evidence was provided that the results came in only after the patient had called to request them and that the patient did not follow client's order and report back to the practice for a follow up visit. Client admitted to failing to make record of her communications with the patient after the results came in and her advice for the patient to seek emergency hospital services as he was no longer residing in the state of Texas. Based on these arguments the BON modified their order, removed all supervision and monitoring requirements and only required client to complete some continuing education.

How State Agencies Use Standard of Care to Regulate

by Troy Beaulieu, Esq.

The regulatory process has a huge impact on your license or application for a state-issued license. One of the important components impacting both is the standard of care applicable to your license. This article will discuss how



regulatory agencies use standard of care, the impact it has on your license and the connection it has to an application for licensure. The goal is to provide you with greater understanding so can leverage this additional knowledge to minimize the risk of receiving a complaint or having problems with your license application.

What is Standard of Care, Where Do I find it and why is it Important to Me?

Most regulatory agencies identify the minimum expectations and obligations license holders must satisfy when engaging in licensed activity. This is commonly referred to as the “standard of care” for a particular industry, profession, occupation, or other licensed career. This standard of care typically revolves around what a reasonably prudent license holder should do under the same or similar circumstances. It sets the minimum level of competency, professionalism, and adequacy for any work you perform as a license holder. Your regulator will likely enforce this minimum standard when evaluating any claim of misconduct levied against you in the complaint process. It may also become an issue during the application process if you have an apprenticeship or some sort of probationary license after which an application for a full license is evaluated by your regulator or you are trying to upgrade your license to a higher-level credential. When the agency is considering approving your application, they may have concerns about whether your conduct as an apprentice, licensee-in-training or license holder has measured up to these minimum standards. A negative determination by the agency can result in problems with your application and even the denial of your request to obtain a license.

Where exactly your standard of care is detailed can sometimes be challenging to determine. It can be in published a variety of different places. Sometimes the standard of care will be identified in the law the Legislature passed and charged your regulator with enforcing. An example of this is the real estate appraisal industry. The Legislature has written directly into the statute that all real estate appraisers are required to adhere to the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Tex. Occ. Code § 1103.405. Other times the minimum standard of care may be identified in a rule created by your regulator. For example, the Texas Education Agency has created an Educator Code of Ethics in their rules, which all credentialed educators must comply with (19 Tex. Admin. Code § 247.2) and the Texas Board of Veterinary Medical Examiners has detailed the professional standard of care veterinarians must meet when treating patients in their rules (22 Tex. Admin. Code § 573.22). Standard of care may also be addressed in case law issued by the courts, which often adjudicate questions about minimum standards of conduct for professions, occupations, or license holders. Sometimes the standard of care may be published in nationwide recognized standards that your regulator has incorporated into state law or the agency’s rules. Examples of these include Generally Accepted Accounting Principles for certified public accountants which are published by the Financial Accounting Standards Board, the Uniform Standards of Professional Appraisal Practice for real estate appraisers which is published by the Appraisal Standards Board of the Appraisal Foundation or the Ethics Code for Behavior Analysts, published by the Behavior Analyst Certification Board. Each of these are incorporated into state law, so the standards can then be enforced directly against someone in a

complaint or application matter pending before the agency.

The Impact of Standard of Care on Your License

License holders must make sure they are aware of the standard of care that applies to their license and satisfy it when performing licensed activity. The standard of care your regular enforces will impact complaints filed against you. It can often be the decisive factor used to evaluate whether a license holder has violated the law based on the accusations in the complaint. Breaches of the standard of care are a common basis for regulators to take disciplinary action against a license holder. Remember that a large part of your regulator's job is to make sure the public is protected. If your regulator believes you cannot satisfy the minimum standards required to safely practice your profession or occupation, it may decide to take action against you.

The Impact of Standard of Care on Your Application

If you are applying for a license or seeking to upgrade your license to a higher-level credential, knowing the standard of care that applies is important to the success of your application. Most state regulatory agencies have provisions in their laws or agency rules that allow the agency to deny an application if they believe there has been a breach of the standard of care. Again, one of your regulator's primary functions is to protect the public. If they believe your practice indicates there are risks to the public, they may not agree to issue you a license.

Conclusion

License holders should know, understand and be able to apply the standard of care in their licensed industry so they meet minimum standards. This will help to minimize the risk of being accused of misconduct and receiving a complaint. If you do receive a complaint, applying the standard of care will be critical to resolving the allegations to protect your license and livelihood. Likewise, those seeking a license or requesting a higher-level credential must also know, understand and apply this standard properly so it does not negatively impact their chances of being approved for a license.

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

Part 5 in a 5 Part Series by London de la Teja

Aggregate certain types of documents requested by the legal team and send them all at once in one combined file. For example, the legal team often requests character reference letters from clients. This may take some time for the client to obtain from colleagues and coworkers. Rather than piecemeal submission of the material, wait until you have all of them, and then combine them into one .pdf file. This will reduce the amount of time the legal team needs to spend with those files and reduce the associated costs.





“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.

Professional Recognition Days December Calendar

Team Bertolino is grateful for the expertise and dedication of these professionals. Thank you for your outstanding contributions to your respective industries.

December 1:

- National Bartender Day

December 6:

- National Miners Day
- National Pawnbrokers Day

December 8:

- National Blue-Collar Day

December 9:

- International Day of Veterinary Medicine



Side Bar ...

Bertolino Law Firm Employees Take Time for Team-Building During the Holiday Season

On December 8th, the Bertolino staff carved out some time to spend together, enjoying several events including a "Secret Santa" gift exchange, an "Ugly Christmas Sweater" contest, and group karaoke.

Later that evening, we met again for an awards dinner that recognized exemplary adherence to Bertolino LLP Core Values, as well as appreciation for Firm leadership. This was not only a celebration of individual accomplishments but also a testament to the Firm's commitment to fostering a workplace culture that values integrity, collaboration, and excellence. As colleagues gathered to honor those who demonstrated unwavering dedication

to our core principles, the event served as a powerful reminder of the collective strength that emerges when a team is united by shared values. It reinforced the importance of upholding Bertolino LLP's commitment to being 100% client-centered, compassionate, trustworthy, attentive, aggressive, results-focused, innovative/adaptable, and growth oriented, inspiring everyone in attendance to continue embodying these core values in their daily work.

A relaxed PJ Brunch the next day was the perfect way to wrap-up our holiday celebration while bringing together our work family and our home families.



Ugly Sweater Contest Winners, from left: Cimone won "Cute Ugly", Sheri took Best Overall, and London won "Most Creative"



The beginnings of a new girl band?



From left: Troy, Sheri, Tony with his Innovative Leadership Award, Melissa, London, and LaJuana



Sr. Associate LaJuana "LJ" Acklin was presented with the Compassion Core Value Award



Paralegal Melissa "MJ" Hooper was presented with the Innovative/Adaptable Core Value Award



AR Manager London de la Teja was presented with the Trustworthy Core Value Award

**From our families to yours,
may your days be filled with
peace, hope, and joy this
holiday season.**

"The Bertolino Bunch"

"Best Overall" Ugly Sweater Contest Winner



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