

On The Record . . .

Official Newsletter of BERTOLINO LLP

February 2024



[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 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

Should I Avoid Posting on Social Media While Under Investigation for Alleged Misconduct?

by Tony Bertolino, Esq.

Social media is a common outlet for many, if not most, individuals in their professional and personal lives. Businesses benefit from advertising on social media and interacting with clients or patients. Individuals use social media for various reasons, including connecting with family and friends and airing opinions on different subjects. However, social media can also be problematic, particularly regarding one's employment, business, and occupational licensing board.



If you are a license holder and facing investigation or a disciplinary proceedings before your licensing agency or board, steering clear of social media is likely your best option. An adverse decision in your professional licensing disciplinary case can seriously affect your career and livelihood.

Social Media Usage Can Lead to Further Disciplinary Violations

Many individuals use social media platforms as a sounding board for their complaints and grievances about businesses, government entities, and others. While individuals certainly have the legal right to air their opinions in this very public forum, they are not immune to the often adverse consequences of their actions. For instance, an employee can freely complain on Facebook about a

supervisor, co-workers, or job conditions. Still, those posts could result in discipline from their employer or even job loss in some circumstances.

Similarly, posting your frustrations or views on your pending disciplinary proceedings will not benefit you. Your disciplinary board inevitably will see your post, one way or another, and may find that you have further violated the rules of your profession by acting unprofessionally, divulging confidential information, or otherwise failing to behave honorably. Additional violations could lead to greater sanctions, placing you in a worse situation.

Furthermore, your profession may be subject to specific rules or laws that address social media usage and the consequences if you violate them. For instance, the Texas Board of Nursing has explicitly stated that social media posts may violate nurses' duty to maintain professional boundaries, refrain from discriminating against patients, and observe patient confidentiality rules. As a result, if nurses make social media posts that violate these ethical or legal obligations concerning patient privacy or confidentiality, or if their posts are discriminatory or embarrassing to patients, they could be subject to discipline by the Texas Board of Nursing.

The Texas Medical Practice Act also forbids physicians and other medical professionals whom it licenses and regulates from engaging in unprofessional and dishonorable conduct. Making social media posts about ongoing disciplinary proceedings and divulging details about the complaint or complaining party could fall within the definition of unprofessional or dishonorable conduct. These posts could also divulge confidential patient information, leading to additional violations.

Social Media Posts Could Lead to Additional Negative Evidence Against You

The content of disciplinary complaints is often confidential until a resolution has been reached. Therefore, if you post information about the proceedings, and the complaint is later dismissed, you have released information about the alleged violations against you that might never have become public knowledge. Your posts may give you negative attention that otherwise might never have occurred.

Likewise, you cannot expect confidentiality when you post on social media. Anything you say on social media can be used against you. If you inadvertently provide details or admit a violation in your social media post concerning your disciplinary proceedings, you could give your licensing board additional damaging evidence against you in your case. You should refrain from discussing your case or events related to your case with anyone other than your attorney, which is the only relationship that is privileged and protected from discovery by your licensing board.

Social Media Posts Could Lead to Other Charges or Sanctions

In some cases, discussing your disciplinary case online puts you at risk of other charges or sanctions. For instance, if you are a medical professional, you are subject to the Health Insurance Portability and Accountability Act (HIPAA). If you include a patient's protected health information (PHI) in your social media post, you violate HIPAA. Not only can that violation lead to additional disciplinary charges, but it also can result in you being fined by the U.S. Department of Health and Human Services (HHS) and even facing criminal charges.

In conclusion, while social media has become an integral part of personal and professional communication, its use in professional licensing disciplinary proceedings demands caution. The potential pitfalls are evident, as individuals facing investigations or disciplinary actions before licensing

boards may inadvertently worsen their situations by sharing their grievances or details of the case on social media platforms. The repercussions extend beyond the immediate risk of violating professional conduct rules, including the possibility of additional charges, sanctions, and negative impacts on one's career and livelihood. As highlighted by specific examples, such as the regulations set by the Texas Board of Nursing and the Texas Medical Practice Act, professionals must be aware of industry-specific rules regarding social media usage. In navigating such delicate matters, maintaining confidentiality, refraining from sharing sensitive information, and seeking legal counsel are paramount to safeguarding one's professional standing and ensuring a fair resolution to disciplinary proceedings.

Hallmark Achievements

Texas Behavioral Health Executive Council v. JS

Facts: JS engaged our firm to defend her career and reputation against unlicensed practice of counseling allegations. Our client faced revocation of her credentials and damage to her highly regarded reputation in the community.



Outcome: The firm evaluated the available evidence and submitted a robust response addressing both the facts and applicable law. We demonstrated that the Council did not have a valid basis for pursuing disciplinary action against our client. Upon conclusion of the investigation, the Council dismissed the complaint. JS's credentials and reputation remain intact and she can continue to serve her community.

Texas Behavioral Health Executive Council v. NJ

Facts: Our client, NJ, hired us to defend her against two complaints filed with the Council by a former disgruntled employee and another state agency alleging she had violated minimum professional standards in her practice as a marriage and family therapist. The invalid complaints threatened to damage her professional reputation, ability to obtain future employment, potential disciplinary action from the Council and a negative impact on her livelihood. The disgruntled employee was mad at NJ for legitimate workplace action taken to protect clients and the employer and ultimately led to NJ being forced to terminate the toxic employee. After being



terminated on legitimate grounds, the former employee filed a complaint with the Council and another state agency which also submitted a complaint. She made wild and unfounded allegations that NJ had ordered her to engage in unprofessional and unethical misconduct.

Outcome: Bertolino LLP evaluated the client's case, and we gathered the documentation necessary to fight against the baseless complaints. We developed a well written response proving this was a disgruntled employee who had a grudge without any merit to her allegations. We advocated aggressively on the client's behalf to demonstrate that the complaint had no legitimacy and needed to be dismissed. Ultimately the Board agreed to dismiss both of our client's complaints with the Council in full and took no action against her license. This allowed her to return to the work she loves and kept her professional reputation and livelihood unblemished.

What Does My Administrative Law Attorney Need from Me?

by Troy Beaulieu, Esq.



Fighting for your license can be an anxiety-provoking situation and a significant endeavor that people should not take lightly. Hiring an attorney to advocate for you is critical to increasing the chances of a positive outcome. It can be expensive because it involves a lot of challenging and time-consuming work. But when your license and the livelihood and professional reputation it represents are on the line, you must make the long-term investment needed to achieve victory. But what do you need to do to help your attorney help you? What does your attorney need to be an effective advocate for you and protect your legal interests? This article will discuss how you can work with your attorneys to provide what they need to fight for you. This will increase your chances of a positive outcome and make the experience less stressful and less expensive.

Communicate Clearly with Your Attorney

Good communication with your attorney is critical to fighting successfully for your license. You must make sure you respond timely to requests from your attorney, give full, complete and accurate answers to questions and share any updates or new developments so the attorney can fight well for you. If you are unsure whether something is important, ask your attorney. Inaccurate, incomplete or missing / unknown information can cause damage to your legal case. It will also save you additional legal costs by minimizing the follow up and additional work your legal staff need to do. Plus, if your attorney cannot get in contact with you to share critical information, options or developments, you may lose valuable rights, opportunities and options that impact your case.

Share Your Documents Efficiently with Your Attorney

Your attorney needs to see your documents. They play a critical role in your case. Without them your attorney may get surprised and even ambushed by

the government's lawyers or miss critical obligations and deadlines. This obviously hurts your chances of success. Make sure your attorney gets a copy of all your documents as soon as possible so the attorney can thoroughly prepare. If you are unsure what is needed, ask your attorney and they will clarify things. Having the necessary material early on in the process will give the attorney the research time needed to evaluate the records, perform necessary legal research and develop and implement a good legal strategy to fight back for your interests. When documents are missing, delivered at the last minute or incomplete / inaccurate, your attorney has a harder time fighting for you. The attorney may also get ambushed by the government's lawyers because they have more information. This also increases legal costs due to follow up efforts, requesting extensions to deadlines and extra time spent deciphering and unraveling disorganized documents.

Let Your Attorney Do Their Job Effectively

You hired an attorney because you do not have legal experience. Your attorney does, so make sure to give them the latitude to protect your interests and do what needs to be done. If your attorney has too many limits on their exercise of professional, legal judgment or cannot take advantage of a time-sensitive opportunity, you could miss out on important options and avenues for protecting your livelihood. Plus, more time spent directing your attorney on details generally increases legal costs. Your attorney should keep you informed and have you approve the overall legal strategy, but then let the attorney handle the details.

Listen to Your Attorney and Follow Their Advice

Remember to consider carefully the advice your attorney provides. Legal matters can feel overwhelming and complicated. But that's exactly the situation your attorney is trained and experienced in handling. Trust your attorney and follow the legal advice given so you can navigate these challenging times well. If your attorney provides supported recommendations based on assessment of the law and facts, you should heed their recommendation so that more problems do not develop. The last thing you want to do is make a problem worse and incur more legal costs fighting those new challenges because you did not listen to the legal counsel you paid for.

Conclusion

It is important to protect your livelihood and reputation and retaining an attorney is essential to keeping your career safe. You can reduce the stress and costs of fighting to protect your government-regulated license by remembering a few key ingredients to help your attorney fight well for you. Communicate effectively with your attorney and give your legal professionals all the documentation they need to advocate well for you. If you're not certain, ask what is needed and they will tell you. Once they have that material, do not micromanage the situation. Trust their professionalism to get the job done and to keep you well-informed and advised on important issues. Finally, listen to your attorney and follow the recommendations given so things do not get worse. If you do these four key things, you will be well on your way to reducing the stress and costs related to fighting to protect your livelihood, reputation and career.



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: February Calendar

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

February 3:

- National Women Physicians Day

February 18:

- National Engineers Week



Side Bar ...

Bertolino LLP is excited to announce a new strategic partnership initiative with insurance companies. The firm has initiated efforts to partner with insurance companies who provide insurance coverage to our clients. Insurance companies provide valuable financial resources and complaint coverage to our clients who have legal matters where their license, livelihood and reputation are under attack by the government. By partnering with these insurance companies, we can provide greater help to clients at less cost for them during an already stressful and trying time. In a situation where the ability to fight back aggressively is so important and the costs of doing so can become expensive, it's important to have strategic insurance partnerships like these in place. Bertolino LLP remains dedicated to a 100% client-centered approach. Our *Insurance Partnership Project* effort is just one of the many ways we continue to help our clients achieve their goals and protect their license, livelihood, and reputation.



[Contact Us](#)

[Visit Our Website](#)

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