

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

Melissa Hooper
Certified Paralegal

Lesa Surber
Certified Paralegal

Cimone Murphree
Project Liaison

Jasen Dalus
Client Success Liaison

Protecting Your Professional Future: Navigating Disciplinary Proceedings with Your Licensing Board

by Tony Bertolino, Esq.

As a licensed professional, you are subject to various rules and laws that govern your occupation or profession. You may face disciplinary action before your professional licensing board or agency if you violate any of those rules or laws. If that agency finds that you have violated a rule or law, you can face potential severe sanctions that may permanently impact your license and career.



Take Your Licensing Board Complaint Seriously

Even if you believe that a complaint or allegations against you are completely without merit, you still must take a licensing board complaint seriously. No matter if you think your licensing board ultimately will dismiss the complaint, you nonetheless have a duty to respond, and to do so in a timely fashion. Failing to respond to a complaint before the deadline that your licensing board has set is essentially the same as not responding at all. In a licensing board investigation, no matter its merits, your professional credibility, reputation, and career are at stake. Therefore, the lack of a response will only prejudice you, cause irreparable harm, and make your situation suddenly become much worse. No licensing board

has dismissed a complaint simply because the license holder chose to ignore it. Furthermore, many licensing boards consider the failure to respond, or the failure to timely respond to a complaint, as a separate rules violation that carries the potential for further sanctions. As a result, even if you do not end up facing sanctions for the allegations in the complaint, you might still face sanctions simply for failing to respond to the complaint.

Texas Medical Board

Under 22 Tex. Admin. Code §179.4(a), the Texas Medical Board (TMB) may request a licensee to produce medical records related to a disciplinary investigation or proceeding. Under these circumstances, the licensee must produce these records within a reasonable time, which is defined as no more than fourteen calendar days. However, a reasonable time may be a shorter time if the urgency of the situation requires it or there is a possibility that the records may be lost, destroyed, or damaged. Similarly, 22 Tex. Admin. Code §179.4(e) states that a license holder must respond in writing to all written requests for information within ten days of the date of the request. Failure to timely respond to either of these requests can result in further disciplinary action, in addition to the disciplinary action that the license holder already is facing.

Texas Real Estate Commission

Under Tex. Occ. Code §1101.652(a-1)(2), the Texas Real Estate Commission (TREC) can take disciplinary action against a license holder who “fails or refuses to produce on request, within a reasonable time, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder’s possession and relates to a real estate transaction conducted by the license holder.” Similarly, under Tex. Occ. Code §1101.652(a)(4), TREC may suspend or revoke a license if the license holder “fails to provide, within a reasonable time, information requested by the

commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter or Chapter 1102.” The failure of license holders to respond in either of these situations is an independent source of discipline for license holders.

Address All Aspects of Your Complaint

Not only must you respond to the complaint, but you must thoroughly respond to every allegation contained within the complaint. You should not skip, ignore, or leave any allegation unaddressed. Complete a response to each allegation completely and directly, even if you feel that you have adequately addressed the allegation in a previous section of your response. Likewise, do not fail to respond to an allegation, even if you find it ridiculous or so blatantly without merit that it is difficult to respond. Failing to address any allegation, no matter how ludicrous, can lead to disaster, so it is your responsibility to fully respond to the Board, and respond in a timely manner. Your license defense attorney can assist you in drafting a complete and thorough response to each allegation against you.

Avoid a Default Order

Many licensing boards have the authority to enter an adverse finding against you by default if you fail to respond to a disciplinary complaint within the required timeframe. The licensing board also can go ahead and impose whatever sanctions they are recommending, based on the violations of rules or laws of which you are accused. In many instances, the board will issue a default order without holding a hearing or asking for any further input or response from you. Therefore, even if you did absolutely nothing wrong, you still could end up with a disciplinary finding and sanction if you ignore the complaint. As a result, ignoring a complaint is never a good move.

Regulation

The Texas Department of Licensing & Regulation (TDLR) licenses and regulates various occupations in the state. If the TDLR issues a Notice of Alleged Violation (NOAV) to a licensee following an investigation, a licensee must respond within 20 days. Under Tex. Occ. Code §51.304, if the licensee fails to respond within 20 days, by either accepting the TDLR's recommendations and proposed penalties or requesting a hearing, the TDLR can and will enter a default order against the licensee with no further proceedings.

Texas Board of Nursing

The Texas Board of Nursing (BON) handles disciplinary complaints against nurses. Although the BON does not immediately enter a default order if a nurse does not respond to a disciplinary complaint, it eventually will issue a default order in some circumstances. For instance, if the BON is unable to reach a nurse during the informal settlement process, it will automatically file formal disciplinary charges against the nurse. At that point, the nurse must respond in writing to the formal disciplinary charges within 20 days. If the nurse fails to timely respond, the BON may proceed to revocation of the license holder's nursing license by default.

Conclusion

Facing disciplinary action before your professional licensing board demands diligent attention and strategic response. Regardless of the validity of the allegations against you, failure to engage in the process can lead to severe consequences for your career. By promptly addressing complaints, adhering to deadlines set by your licensing board, and seeking competent legal representation, you can mitigate the potential impact on your professional future. Remember, taking your licensing board complaints seriously is not just a matter of compliance, it's a proactive step



Bertolino Law Firm Recognized for Excellence in Workplace Culture

by Sheri Middlemas

I am thrilled to announce that BERTOLINO LLP has been honored with the prestigious Excellence in Workplace Culture Award! This remarkable achievement is a testament to the dedication, collaboration, and hard work of each and every member of our team.



This award isn't just a recognition of our efforts; it's a celebration of the inclusive, supportive, and innovative environment we've collectively fostered within our law firm.

From day one, we set out on a journey to create a workplace where every individual feels valued, inspired, and empowered to contribute their best.

Over the past five years, we've implemented numerous initiatives aimed at enhancing our workplace culture:

Open Communication Channels: We encourage open communication at all levels, ensuring that everyone's voice is heard and valued. Whether through regular meetings or one-on-one check-ins, we strive to maintain transparent and honest communication channels.

Employee Development Programs: Investing in our employees' growth and development is a top priority. From comprehensive training programs to mentorship opportunities, we provide resources and support to help our team members thrive both personally and professionally.

Work-Life Balance Support: Recognizing the importance of work-life balance, we implemented flexible work arrangements, wellness programs, and initiatives to support our employees' physical and mental well-being.

Recognition and Rewards: Celebrating achievements and acknowledging contributions is essential to maintaining morale and motivation. Through employee recognition programs, performance awards, and team celebrations, we ensure that hard work and dedication are always appreciated and rewarded.

As we celebrate this remarkable achievement, it is crucial to acknowledge that our journey towards excellence is far from over. We must remain committed to nurturing and enhancing our workplace culture, continuously striving for improvement and innovation.

To every member of the BERTOLINO LLP team, I extend my heartfelt

gratitude for your tireless efforts, unwavering commitment, and relentless pursuit of excellence. It is your collective dedication that has propelled us to this milestone, and I am immensely proud to stand alongside such an exceptional group of individuals.

As we look towards the future, let us reaffirm our commitment to upholding the values that have defined our journey thus far. Together, we will continue to build a workplace where every individual thrives, and our collective potential knows no bounds.

Hallmark Achievements

Texas Board of PT Examiners v. KJ

Facts: KJ hired firm after receiving a complaint from a former patient. The patient filed the complaint with the Board and alleged that KJ failed to assess the patient's status, allowed the unlicensed practice by technicians and committed fraudulent billing practices.



Outcome: The firm provided a response to the complaint, breaking down each allegation. Regarding the failure to assess the patient's status, the firm provided evidence of all the treatment records for the patient. The records included the referral, the evaluation and all SOAPs for each of the 4 sessions the patient had. The firm provided legal argument based on the language of the statutes as to why certain conduct committed by KJ during these sessions was skilled PT work contrary to the patient's contentions. Next, regarding the unlicensed practice, the firm provided a witness statement by the alleged actor of the unlicensed practice detailing how KJ supervises her during all sessions with patients. Further legal argument was provided based on the statute detailing how and when a technician needs to be supervised. Lastly, regarding the fraudulent billing, evidence of all invoices provided to the patient were submitted along with a witness statement from KJ's office manager detailing the instructions she provides all patients related to their insurance and cost. Based on the evidence provided and legal arguments made, the Board dismissed the complaint and took no action against KJ's license.

Texas Department of State Health Services v. SR

Facts: Our client, SR, hired us to defend him against a complaint filed with the Texas Department of State Health Services by a biased personal acquaintance alleging SR had violated confidentiality requirements as a paramedic for a municipality. The complainant filed this groundless accusation to retaliate and obtain an advantage in a separate dispute. The invalid complaint threatened damage to SR's professional reputation, his ability to obtain employment as a paramedic, potential disciplinary action from the Department and a negative impact on his livelihood.



Outcome: The Firm assessed the client's case, developed a solid legal strategy, and collected the documentation needed to fight back against the illegitimate

complaint. We prepared a strong written response to the Department to demonstrate it lacked legal authority to pursue these allegations against SR. We advocated aggressively on the client's behalf to demonstrate that the complaint had no legitimacy and needed to be dismissed on legal and equitable grounds. After investigation, the Texas Department of State Health Services agreed with our assessment and dismissed our client's complaint with a non-disciplinary warning. The Department took no action against SR's license, which kept his professional reputation, career, and livelihood unblemished.

Investing In Your License to Proactively Protect Your License, Reputation, and Business

by Troy Beaulieu, Esq.



The process of obtaining a license from a state regulatory agency to practice your profession or occupation is tough. It often requires lots of education, completion of examinations, going through a background check process and demonstrating you have the skills and knowledge to operate in your chosen industry. Once you've obtained this important and valuable credential, you need to protect it, and the professional reputation that is the lifeblood of your continued success in the industry. Once you start operating your business, it's easy to forget the compliance and regulatory world that has a profound impact on your livelihood and professional reputation. However, legal changes are constantly taking place, and this impacts your license and business each day. Do not let your busy work and family life prevent you from investing in your license and staying ahead of problems. You need to dedicate some time, energy, and resources to staying in compliance and keeping your professional reputation and livelihood protected. There are four specific actions I encourage all license holders to take to protect the license and professional reputation you have worked hard to develop: (1) Obtain consulting services from a qualified law firm to proactively manage legal compliance; (2) Stay aware of current industry regulatory activity through resources such as Bertolino LLP's Know Your Regulator bulletin and podcast; (3) Have an administrative law focused firm that is dedicated to compliance and license defense vetted and on standby so you can react quickly when your license is threatened; (4) Request Bertolino LLP provide a free educational presentation to your trade group or organization on a compliance-related topic.

Consult A Law Firm That Focuses on Regulatory and Administrative Law to Evaluate Your Business for Compliance

The law is constantly changing and your obligations as a license holder morph with it. Modes of doing business and opportunities for growing your endeavors as a license holder in your industry are frequently impacted by changes stemming from new regulatory rules, changes in the law made by the legislature or new developments and interpretations issued by the courts and the regulatory agency itself. To continue being successful and minimize your compliance risk profile, you must invest some time, energy, and resources in having a legal professional evaluate your practices and business operations for

compliance. Making sure your new idea about how to operate, expansion into a new arena or new development in business strategy complies with your legal obligations is critical to your continued success and reducing expenses associated with a regulatory faux pas. Bertolino LLP is your go-to source or compliance consultation. We know what causes compliance problems for license holders and their businesses because we defend them when their license is threatened by their regulator. Utilize our wealth of knowledge and insight to proactively minimize regulatory compliance risks and reduce long-term legal costs by avoiding larger problems.

Stay Informed About Current Regulatory and Legal Issues Impacting Your Industry and Business Through Bertolino LLP's Free Know Your Regulator Bulletins and Video Podcasts

In today's market, staying informed on developments is crucial to success and staying ahead of your competition. You can stay on top of regulatory developments by utilizing Bertolino LLP's free *Know Your Regulator* educational bulletins and video podcasts. Bertolino LLP has started providing these free educational bulletins published periodically to keep license holders well informed of changes in rules, legislative developments and new interpretations from the courts and regulators. Check out the soon-to-launch *Know Your Regulator* page on Bertolino LLP's website where you can learn more, and sign up to receive our free, periodic bulletin. Here you can also learn more about our Know Your Regulator Video Podcast set to launch in **June 2024** which will feature interviews with government regulators, lawyers and Bertolino LLP staff discussing hot topics pertinent to the regulatory world affecting your license, business, and the livelihood you have worked hard to build.

Vet An Administrative Law Oriented Firm That Focuses on License Defense So That You Are Poised to Respond Quickly and Aggressively to Regulatory Complaints or Other Issues That Require Quick Attention

When legal or compliance issues arise, time is a precious commodity. You do not have the luxury of waiting to carefully evaluate which law firm is the right fit for your needs. You need a lawyer to immediately get to work on your problem. One way you can dramatically reduce the turn time needed to respond to an urgent legal matter is to already have the firm chosen. Locate and vet a law firm such as Bertolino LLP that focuses on license defense and administrative law up front before problems arise. We aggressively fight to protect our client's license, livelihood and industry reputation so their business thrives and Bertolino LLP can do the same for you.

Request a Free Education Group Presentation from Bertolino LLP Who Will Send an Attorney to Speak with Your Trade Group or Organization on a Variety of Compliance-Oriented Topics That Will Help Proactively Protect Your License and Business

Bertolino LLP provides trade groups and other organizations with free, educational presentations on a variety of compliance-focused topics. This can give you greater insight into your regulatory obligations and help reduce your risk profile so you can focus on running your business without worrying about compliance issues. Check out our [group presentations page on the Bertolino LLP website](#) and fill out the fields in the "contact us" section at the bottom of

the page so we can start to plan your free educational presentation for your next group meeting.



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.

COMING JUNE 2024 ...

Know Your Regulator: The Podcast that Inspires You to Engage



Professional Recognition Days: April Calendar

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

April:

- Occupational Therapy Month
- Counseling Awareness Month

April 3:

- Paraprofessional Appreciation Day

April 14:

- Pathologists' Assistant Day

April 18:

- Lineman Appreciation Day
- Health Information Professionals Week

April 21:

- Administrative Professionals Week
- Medical Laboratory Professionals Week

April 22:

- National IT Service Provider Day

April 24:

- Administrative Professionals Day

April 25:

- National Plumbers Day

April 27:

- World Veterinary Day

Presented by BERTOLINO LLP, this is a free, educational podcast to keep professional license holders informed of the ever changing laws, rules, regulations, and legal interpretations that impact their livelihood and businesses.



Side Bar ...

How to Apply for the 2024/2025 Bertolino Impact in Government Scholarship

Bertolino LLP has transitioned from the traditional written essays for scholarship submissions. Students will record video essays between 30 and 60 seconds long addressing the following points:

- Assume we are now 50 years into the future. Describe how American society has changed in at least one significant legal way. How are people interacting with the new laws?
- Explain how and why the law has evolved to meet this society-impacting change.
- How do Americans (including the legal profession itself) interact differently with the law and people who need legal services because of this societal change?
- Has this change been an overall positive or negative for Americans and their interaction with the law?



Students must shoot and edit their videos before posting the content as an unlisted YouTube video. Using the official [scholarship submission form](#) on our website, applicants can then send their videos to Bertolino LLP alongside other essential application materials, including proof of acceptance to an accredited United States university and an unofficial transcript.

Bertolino LLP's scholarship selection committee will not consider applications submitted without essential materials or after the scholarship's submission deadline has closed. Visit our [Scholarship Page](#) for more information and complete submission details. Students have until June 1st, 2024, at 11:00 PM CT to submit their applications.

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