

# On The Record . . .

Official Newsletter of BERTOLINO LLP

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## Who Can File a Disciplinary Complaint Against a Licensed Professional?

by Tony Bertolino, Esq.

All individuals holding professional licenses issued by the state must follow certain laws and rules. Licensed professionals must answer to the state agencies that license and regulate their professions. These state agencies receive complaints from various individuals concerning any allegations that licensed professionals have violated the rules that govern them.



### Filing Disciplinary Complaints

Generally, anyone can file a disciplinary complaint against a professional licensed in Texas. As a result, complainants may include current and former patients, clients, or customers of the licensee, current or former employees, or members of the public. Current and former colleagues, coworkers, and employers may file complaints against licensees. Licensing board staff also may file complaints as they arise through investigations, referrals, or other sources.

### Anonymous Complaints

*Texas Medical Board and Texas Real Estate Commission*

Many licensing boards and agencies do not permit anonymous complaints. Therefore, if you wish to file a complaint,

you must be willing to identify yourself, and the likelihood is that the professional against whom you are filing the complaint will learn your identity at some point during the process. For instance, the Texas Medical Board requires that you identify yourself and give contact information when you file a complaint against a licensee. Likewise, the Texas Real Estate Commission will not accept anonymous complaints.

*Texas Behavioral Health Executive Council*

Some licensing boards do make exceptions for anonymous complaints. For instance, the Texas Behavioral Health Executive Council (BHEC) may, but is not obligated to, investigate a complaint that “lacks sufficient information to identify the source or name of the person who filed the complaint.” BHEC licenses and regulates social workers, professional counselors, marriage and family therapists, and psychologists.

*Texas Board of Professional Engineers and Land Surveyors*

The Texas Board of Professional Engineers and Land Surveyors accepts anonymous complaints but notes that since the investigator is unable to contact the source of the anonymous complaint for clarification or further information, an anonymous complainant must provide as much information as possible. Additionally, the Board will be unable to notify an anonymous complainant of the results of the investigation of the complaint.

*Texas State Board of Public Accountancy*

Likewise, the Texas State Board of Public Accountancy will take an anonymous complaint but often cannot successfully pursue a complaint if the complainant remains anonymous. For instance, if the complaint stems from a CPA’s failure to file the complainant’s income tax return, the Board must know the complainant’s name to investigate whether the CPA filed

the tax return or not. The CPA is also entitled to know the circumstances surrounding the complaint, so keeping the complainant anonymous is impossible in this situation.

## **Specific Persons Who May File Complaints**

### *State Bar of Texas*

Some professions place specific limitations on persons who may file disciplinary complaints against licensees. For example, Texas Rule of Disciplinary Procedure 1.06 (G)(2) states that only the following may submit complaints or “Grievances” against attorneys to the Office of the Chief Disciplinary Counsel for the State Bar of Texas:

- A family member of a ward in a guardianship proceeding that is the subject of the Grievance;
- A family member of a decedent in a probate matter that is the subject of the Grievance;
- A trustee of a trust or an executor of an estate if the matter that is the subject of the Grievance relates to the trust or estate;
- The judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the Grievance;
- A trustee in a bankruptcy that is the subject of the Grievance; or
- Any other person with a cognizable individual interest in or connection to the legal matter or facts alleged in the Grievance.

### *Texas Education Agency*

The Texas Education Agency (TEA) also identifies persons who may file complaints against educators. Under Texas law, TEA staff may obtain information about and investigate alleged improper conduct based on reports from “a person who serves as the superintendent of a school district of district of innovation, the director of a charter school, regional education service

center, or shared services arrangement, or the chief administrative officer of a private school.” Since these individuals are mandatory reporters, a school district board of trustees or the governing body of a private primary or secondary school must report the failure of any such person to make a mandatory report to the State Board for Educator Certification (SBEC). However, TEA staff may also obtain and act based on information from other sources to bring disciplinary action against educators.

### Conclusion

The process for filing disciplinary complaints against licensed professionals in Texas is thorough and multifaceted, designed to maintain high standards across various professions. Understanding the specific requirements and restrictions for filing complaints, including the limitations on anonymous submissions and the categories of individuals eligible to file certain complaints, is essential for both licensees and the public. These measures ensure accountability and transparency while protecting the integrity of professional services. Licensed professionals should remain vigilant in adhering to the rules and be prepared to address any complaints with the support of a knowledgeable Texas professional license defense lawyer to navigate these proceedings effectively.

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## Employee Spotlight

### Celebrating Jasen Dalus's One Year Anniversary of Exceptional Client Success!

I am thrilled to recognize and celebrate the one-year anniversary of Jasen Dalus, our law firm's Client Success Liaison. Over the past year, Jasen has become an invaluable asset to our team, bringing his unique blend of dedication, sales expertise, and enthusiasm.



As a liaison, Jasen's primary responsibility is to serve as a bridge between our clients and our law firm, ensuring that our clients are happy and their expectations exceeded. His ability to understand and address client concerns

with empathy has made him a favorite among our clients and co-workers alike.

In addition to his role in client relations, Jasen has also excelled in sales, consistently converting potential new clients. Jasen initially joined our law firm with experience in insurance sales and his sales approach has led to unprecedented success, with Jasen breaking multiple monthly sales records within his first year. Without a doubt, his efforts have been instrumental in driving our firm's growth.

Jasen's positive attitude and team spirit have made him a joy to work with. His collaborative approach and willingness to go above and beyond have inspired us all. Whether it's brainstorming new strategies or providing support during challenging times, Jasen is always there with a smile, a funny meme and a solution.

I am incredibly proud to have Jasen Dalus as a part of our Bertolino family. His contributions over the past year have been nothing short of remarkable. Please join me in congratulating Jasen on his one-year anniversary and celebrating his outstanding achievements!

-- Tony R. Bertolino

## Hallmark Achievements

### Texas Behavioral Health Executive Council v. BT



**Facts:** BT received a complaint and hired firm to assist in responding to the complaint and pending investigation. It was alleged that BT practiced without supervision in violation of BHEC rules and statutes which prevent LPC-As from practicing without the supervision of a LPC. BT practiced without supervision for almost 6 months before the complaint was filed.

**Outcome:** The firm provided a response to BHEC advising that BT had unintentionally misunderstood the rules regarding supervision. After reviewing the response, BHEC issued an ISC notice. The firm provided updated character evidence from BT's current supervisor who was aware of this prior bad act. The firm provided additional argument during the ISC that BT did not intentionally practice and provided evidence that he had not submitted any of these unsupervised hours towards his application for licensure as a LPC. After review of the evidence BHEC dismissed the complaint.

### Texas Medical Board v. WD



**Facts:** WD hired firm to assist in the submission of his application for licensure with TMB. WD had several criminal issues that he needed to report and provide records for. WD had 4 prior arrests, one deferred adjudication and one conviction all related to alcohol.

**Outcome:** The firm crafted responses to several questions on the TMB application and provided supplemental explanations for the criminal offenses within the application. Then the firm submitted open records requests to the corresponding counties and requested all records be sent directly to TMB. After review of the responses and explanations related to the offenses, TMB issued WD a full and unrestricted license.

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### Texas Department of Licensing and Regulation v. ZA



**Facts:** ZA hired firm after his application for renewal of licensure was denied due to a recent conviction. ZA was convicted of burglary.

**Outcome:** The firm requested a hearing and provided a supplemental response to the proposed denial. In the response the firm argued that the incident was isolated in nature, domestically related and not an event that would be repeated. It was ZA's only arrest and conviction and any risk with licensure could be remedied by the supervision of his current employer who was willing to sponsor ZA during a probationary period. After review TDLR issued ZA a full license without restriction.

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## Insurance Considerations for Professional and Occupational Licensing

by Troy Beaulieu, Esq.



When you operate using a professional or occupational license, you must consider your errors and omissions insurance needs. No matter how competent, everyone is human, and mistakes, errors and oversights can and do happen; you or your business may face civil or regulatory accusations that expose you to legal liability. Keeping a mindful eye on your insurance options will help you to mitigate those legal risks. This article will discuss insurance and how you can leverage it to protect your license, your business and the investment you have made in your profession or occupation.

### What is the Risk?

A person who relies on their professional or occupational license needs to be prepared for legal exigencies that might arise as part of your practice in your industry. There are essentially three main legal areas of risk to consider: (a) Civil liability from lawsuits filed against you concerning your activities as a licensed individual or business; (b) Regulatory complaints and associated liability concerning your activities as a licensed individual or business; and, (c) Potential criminal liability connected to your activities as a licensed individual or business.

### What is the Insurance Protection available?

Many insurance companies will provide errors and omission insurance (a/k/a professional liability insurance or malpractice insurance), which is a type of liability insurance that will cover legal costs and claims for damages involving allegations of negligence, malpractice, errors, omissions or oversights associated with your business or practice activities. This typically involves civil lawsuits but will also often cover regulatory complaints, disciplinary action and matters pending before your licensing board. However, the intentional misconduct requirements necessary for criminal allegations usually lead insurance companies to exclude criminal misconduct allegations from coverage.

Policies and the insurance cover provisions they contain vary so it is important to read the terms and conditions of your policy carefully and ask questions of your carrier if you still have concerns.

### **What to Do When a Problem Arises?**

**Notify Your Insurance Carrier Immediately to Avoid Loss of Coverage** – When you first receive notice of a claim, lawsuit or regulatory complaint it is imperative that you contact your insurance company in writing immediately to let them know about the claim. Many policies have strict provisions requiring timely notification and provide for exclusion of coverage if the insurance company is not notified within prescribed time limits. Even if it is merely a claim or allegation and a formal lawsuit or regulatory complaint has not yet been filed, its important to make your insurance company aware of this development.

**Do not Communicate About the Claim Until You Acquire Legal Counsel** – Legal claims involving regulatory complaints or civil lawsuits are complex and can have a variety of aspects and considerations that require the attention of a knowledgeable attorney. It's crucial to protecting your rights and putting your best foot forward to avoid speaking substantively about the claim with the other parties to the claim, your regulator (or someone on their staff like an investigator) or any third parties until you receive solid legal advice from a qualified attorney who can represent your interests.

**Obtain Qualified Legal Counsel with Knowledge and Experience Concerning Occupational and Professional License Defense to Protect Your Interests** – You worked hard to obtain your license and develop your business and you need the right attorney fighting to protect you, your license, your professional reputation and your livelihood. Just like you wouldn't hire a dermatologist to do brain surgery, it's important to hire the right attorney for this special and nuanced area of the law. Look for an attorney who handles professional or occupational license defense, practices in administrative law, has experience advocating for clients before regulatory and licensing agencies and has experience handling civil lawsuits involving malpractice claims. Your insurance carrier may have a list of potential lawyers, but do not be afraid to do your own research and then ask if your insurance provider will approve use of the attorney you have located. Many times, their list may be repeat with civil defense attorneys, but lacking in providing a good array administrative law attorneys, so you may have to research beyond the carrier's list. Remember, you have paid those premiums; the insurance company works for you and should work with you to secure the legal representation you need.

**Move Quickly and Do not Ignore Problems** – Time is often a critical factor in protecting your interests and advocating for your license and livelihood. Avoiding problems and delaying action can create problems, limit your options and rights and put your attorney in a time crunch when defending you. Move swiftly to locate qualified legal representation and communicate with your insurance carrier. be ready to provide them with your documentation and information so there is plenty of time to develop hire legal counsel, develop a legal strategy and fight effectively for you. And as mentioned above, insurance companies typically require timely notification when a legal matter arises if they are going to provide insurance coverage to you, so you do not want to delay notifying your carrier.



Engage with your regulatory agency like never before! It can be a challenge to navigate the laws that govern your license and profession. To help license holders take charge of their career, we've created a new educational resource: Know Your Regulator. Our unique resource provides professionals with important agency updates, insights, and opportunities to enhance their professional license.

Empower your license and career and stay ahead in your industry. Take advantage of our free educational resources by visiting **Know Your Regulator**.

**[Click here to listen and subscribe, Know Your Regulator: The Podcast](#)**



## **Professional Recognition Days: August Calendar**

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

**August 4:** U.S. Coast Guard Birthday

**August 6:** National Social Engineering Day

**August 7:** National Psychiatric Tech Appreciation Day

**August 16:** National Airborne Day

**August 19:** National Aviation Day

**August 22:** National Surgical Oncologist Day

**August 31:** Love Litigating Lawyers Day





## Celebrating London and a Decade of Dedication



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